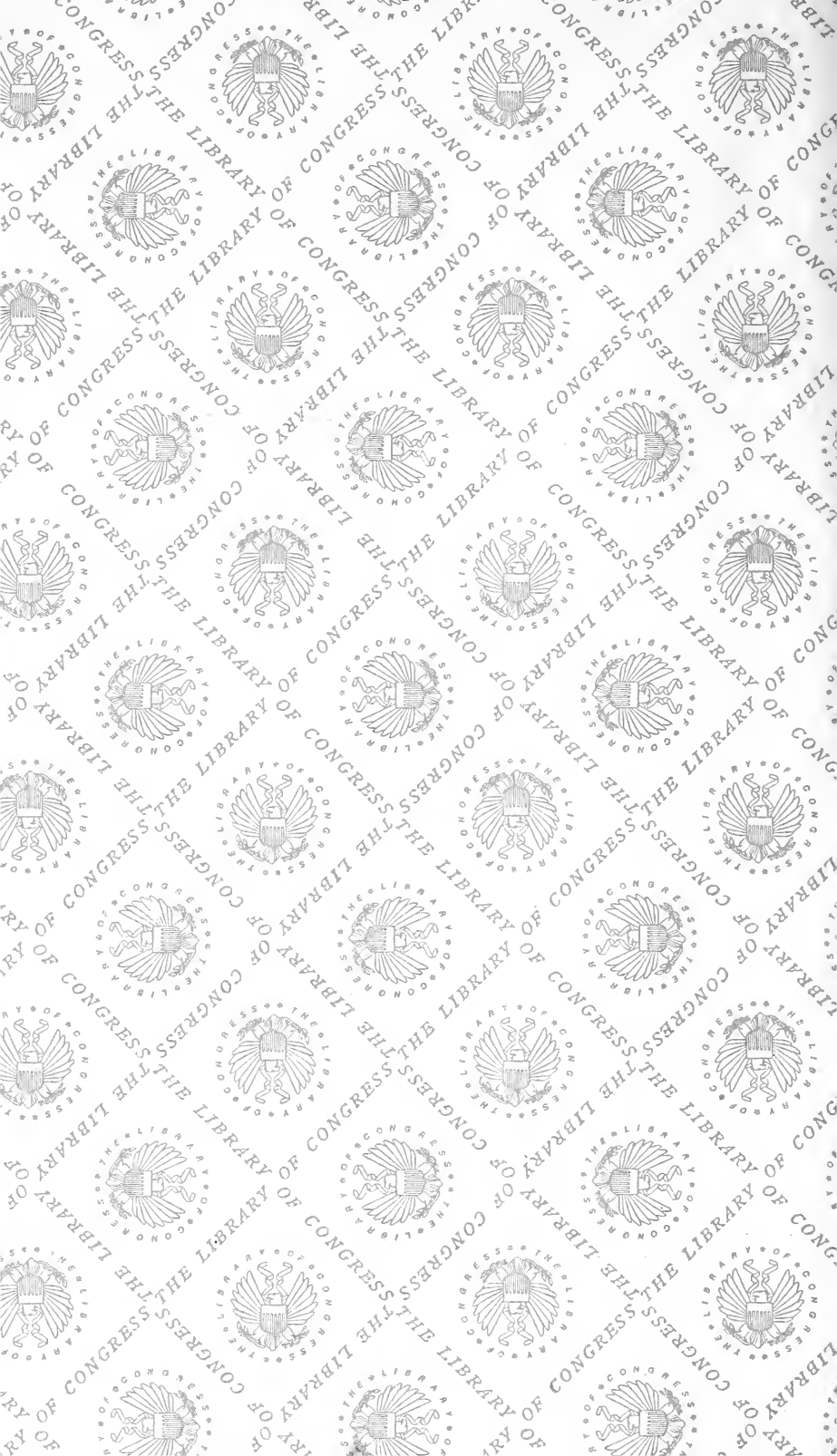
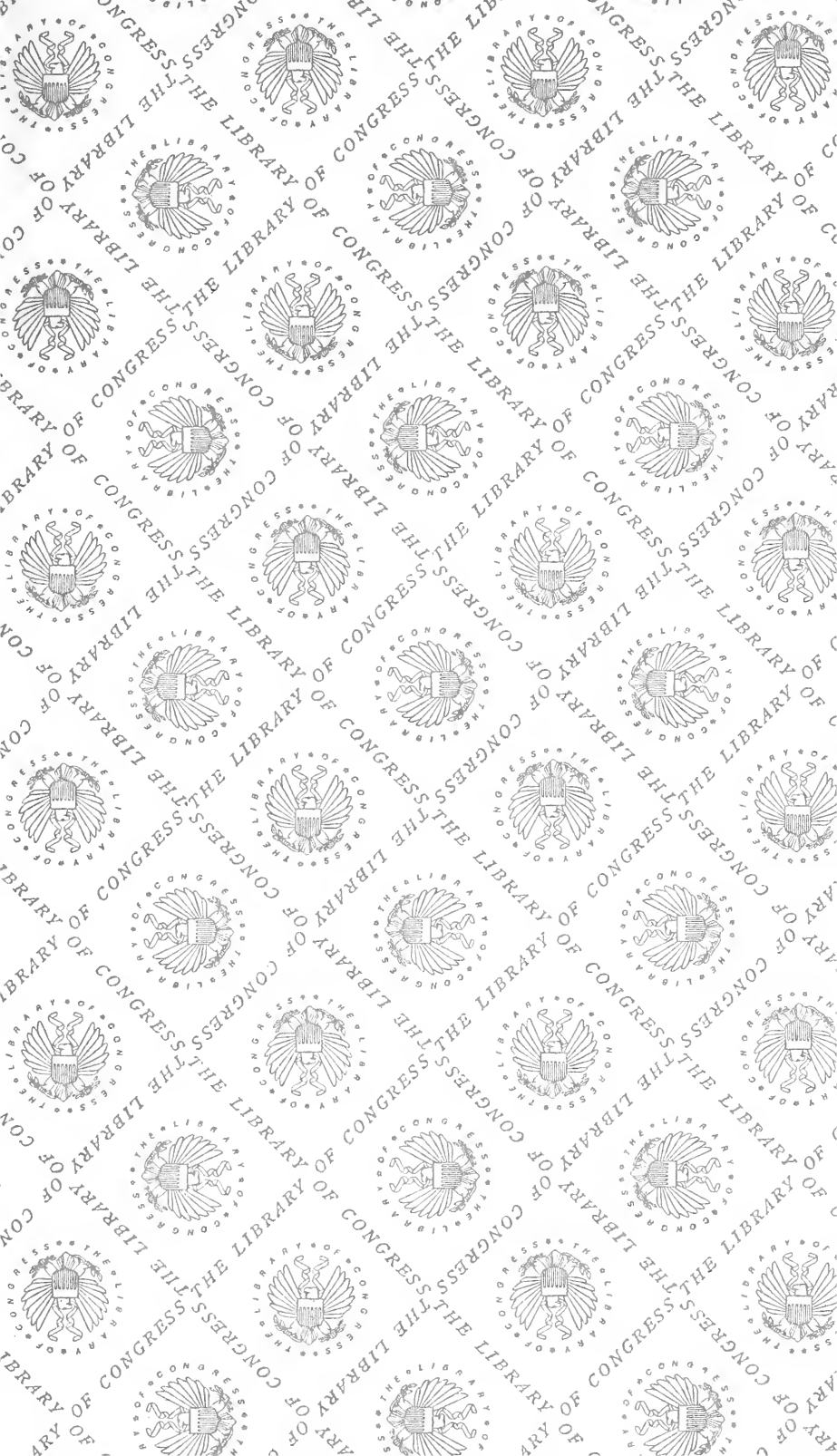

THE LIBRARY OF CONGRESS


THE LIBRARY OF CONGRESS

64TH CONGRESS, 1st Session. HOUSE OF REPRESENTATIVES. REPORT No. 779.

LANDS FOR EDUCATIONAL PURPOSES.

MAY 29, 1916.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. RAKER, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany H. R. 15096.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 15096) to amend the act entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated," and to authorize an exchange of lands between the United States and the several States, having had the same under consideration, recommend the following amendments:

(1) On page 2, line 10, after the word "character," insert the following: "and which were subject to selection at the time the applications were filed."

(2) On page 4, line 10, after the word "character," insert the following: "and which were subject to selection at the time the applications were filed."

(3) On page 4, line 15, after the word "may," insert the following: "within the discretion of the Secretary of the Interior."

(4) On page 4, line 15, strike out the word "by" and insert in lieu thereof the word "under."

(5) On page 4, line 25, after the colon and before the word "And," insert a new proviso to read as follows:

Provided further, That all lands within the boundaries of national forests, title to which may be vested in the States under the provisions of this act, shall be subject to all rights of way which the Secretary of Agriculture may at any time deem necessary for the administration of the national forests.

(6) On page 5, line 3, after the word "State" and before the word "vacant," insert the following: "and with the approval of the Secretary of Agriculture."

(7) On page 5, line 3, after the word "nonmineral" and before the word "public," insert the word "surveyed."

(8) On page 5, line 4, strike out the word "acreage" and insert in lieu thereof the word "value."

(9) On page 5, line 4, after the word "forests" and before the word "may," insert the following: "designated by the Secretary of the Interior."

(10) On page 5, line 6, after the word "Act" and before the colon insert a comma and the following: "but nothing herein shall prevent the consummation of the agreement dated June 16, 1911, between the Secretary of the Interior and the State of California providing for the adjustment of the claim of the United States against the State, because of excess approvals and overcertifications under the grant for common schools, through surrender or conveyance by the State of surveyed school sections within the boundaries of national forests."

(11) On page 5, line 8, after the word "discretion," insert the following: "if they shall find that the public interest will be subserved thereby."

As thus amended, the committee unanimously recommend that the bill do pass.

The bill as thus amended is as follows:

A BILL To amend the act entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated," and to authorize an exchange of lands between the United States and the several States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes," are hereby declared applicable to all grants of school lands heretofore made by Congress, and all selections heretofore made and approved under said grants and in accordance with said act of February twenty-eighth, eighteen hundred and ninety-one, if otherwise lawful, are hereby ratified and confirmed; that all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise valid, and for lands which are nonmineral in character and which were subject to selection at the time the applications were filed and which have not, prior to date of approval, been withdrawn under the provisions of the act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), may be approved under the provisions of said act of February twenty-eighth, eighteen hundred and ninety-one: *Provided*, That nothing herein shall be construed as preventing the approval of selections included within withdrawals under the provisions of said act of June twenty-fifth, nineteen hundred and ten, subject to conditions, limitations, or reservations authorized or permitted by present or future acts of Congress relating to such withdrawn lands if the surface of such land is found by the Secretary of the Interior to be of substantial value for agriculture, grazing, or timber.

SEC. 2. That the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes," is hereby amended by adding thereto the following:

"That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State in pursuance of an agreement, either prior or subsequent hereto, between the State and the Secretary of Agriculture to relinquish its claim, right, and title thereto and select in lieu thereof other unappropriated nonmineral

lands of approximately equal value designated by the Secretary of Agriculture and lying within the boundaries of any national forest or forests within the State wherein the exchange is to be made; that upon the consummation of the exchange herein authorized and its approval by the Secretary of the Interior the President of the United States is authorized to eliminate from such national forest the lands so selected for and on behalf of the State: *Provided*, That the lands granted in place to such State or Territory and surrendered under the provisions hereof shall, upon the approval of the indemnity or exchange, revert to and become a portion of the national forest wherein located subject to all the laws, rules, and regulations thereto applicable.

SEC. 3. That exchanges of title between the United States and States heretofore made and approved under authority of said act of February twenty-eighth, eighteen hundred and ninety-one, whereby the State relinquished its title to surveyed school lands in forest or other permanent reservations in lieu of lands elsewhere are hereby ratified and confirmed, and all pending and unapproved exchanges of like character and which were subject to selection at the time the applications were filed, if found otherwise valid, and for lands which are nonmineral in character, and which have not prior to date of approval been withdrawn under the provisions of the act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), may within the discretion of the Secretary of the Interior be approved under the provisions of said act of February twenty-eighth, eighteen hundred and ninety-one: *Provided*, That nothing herein shall be construed as preventing the approval of selections included within withdrawals under the provisions of said act of June twenty-fifth, nineteen hundred and ten, subject to conditions, limitations, or reservations authorized or permitted by present or future acts of Congress relating to such withdrawn lands, if the surface of such land is found by the Secretary of the Interior to be of substantial value for agriculture, grazing, or timber: *Provided further*, That all lands within the boundaries of national forests, title to which may be vested in the States under the provisions of this act, shall be subject to all rights of way which the Secretary of Agriculture may at any time deem necessary for the administration of the national forests: *And provided further*, That in the future exchanges may be made and approved as provided in section two of this act or at the election of the State, and with the approval of the Secretary of Agriculture, vacant unappropriated nonmineral surveyed public lands of equal value outside the limits of national forests designated by the Secretary of the Interior may be selected in lieu of lands surrendered or relinquished under the provisions of this act, but nothing herein shall prevent the consummation of the agreement dated June sixteenth, nineteen hundred and eleven, between the Secretary of the Interior and the State of California providing for the adjustment of the claim of the United States against the State, because of excess approvals and overcertifications under the grant for common schools, through surrender or conveyance by the State of surveyed school sections within the boundaries of national forests: *And provided further*, That the Secretary of the Interior and the Secretary of Agriculture are hereby authorized, in their discretion, if they shall find that the public interest will be subserved thereby, to exchange lands within the limits of national forests for lands outside of such limits of approximately equal value lost to the State by reason of settlements, entries, reservations, or the mineral character of the lands.

SEC. 4. That the agreements between the States of South Dakota and Idaho and the United States, dated January fourth, nineteen hundred and ten, and October fourth, nineteen hundred and eleven, respectively, so far as heretofore consummated in accordance with the proclamations of the President, dated February fifteenth and June fourth, nineteen hundred and twelve, and March third, nineteen hundred and thirteen (Twenty-seventh Statutes at Large, pages seventeen hundred and twenty-nine, seventeen hundred and forty-three, and seventeen hundred and seventy-seven), are hereby ratified and confirmed.

SEC. 5. That the provisions of this act shall be applicable only where the State is now authorized by law to make the selections, relinquishments, or exchanges permitted by this act, or shall, by constitutional legislative enactment, authorize such selections, relinquishments, or exchanges.

The bill H. R. 15096 is substantially like H. R. 8491, upon which the Secretary of the Interior had already submitted report and upon which the committee held full and exhaustive hearings. The bill

contains some modifications of H. R. 8491, designed to improve the measure and to render it more satisfactory to all concerned.

The bill was referred to the Department of the Interior, and on May 10, 1916, Hon. Franklin K. Lane, Secretary of the Interior, made favorable report thereon, recommending the passage of the bill, which report is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 10, 1916.

MY DEAR MR. FERRIS. I am in receipt of your request for report upon H. R. 15096, a bill designed to facilitate the adjustment of the school-land grant to the various States and to permit of the taking of indemnity or exchanges of land in connection therewith.

The bill is substantially like H. R. 8491, upon which I have already submitted report, but contains some modifications designed to improve the measure and to render it more satisfactory to all concerned.

It has been the general policy of Congress to grant to the various States two, and in some instances four, sections of public lands in place in each township for the support of public schools. The act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the Revised Statutes, has, in the past, been regarded and treated by this department as a general adjustment act, permitting the States to select other vacant nonmineral public lands in lieu of losses to the grant in place; that with respect to the establishment of national forests and other reservations, including within their exterior limits unsurveyed school sections, the reservation operated to defeat the grant in place, but entitled the State to lands in lieu thereof, and that as to school lands surveyed prior to the establishment of such reservations, the State might, under the so-called exchange provisions of the act, surrender its title to such surveyed sections in exchange for public lands.

With respect to the school-land grant made to the States of Washington, Montana, North Dakota, and South Dakota by the act of February 22, 1889 (25 Stat., 676), the Supreme Court of Washington, in the case of the State *v.* Whitney, held, in substance, that the grant was a present one, applicable to all lands, whether surveyed or unsurveyed. The three other States named have not made this contention, but have offered lieu selections or exchanges for lands lost or included within national forests.

In the case of Hibberd *v.* Slack (84 Fed., 571), involving school sections in California, surveyed prior to their inclusion in a reservation, the court held, in substance, that the act of February 28, 1891 (supra), does not authorize the State to surrender school lands in place surveyed prior to the creation of the reservations in exchange for other public lands. This decision was followed in the case of Deseret Water, Oil & Irrigation Co. *v.* State of California (138 Pac., 981). There have been other decisions of State courts dealing with and complicating the question of these grants and exchanges, but the former rulings of this department have been as first above stated. (See 28 L. D., 59, and 41 L. D., 621.)

The situation with respect to these grants is therefore that the former rulings and practices of this department have been questioned or controverted by decisions of the State courts and in one instance by the decision of a Federal court, with the result that the department has felt it incumbent upon it to suspend pending applications for indemnity selection or for the exchange of lands and to refuse to entertain further applications therefor. This situation has resulted in delay and hardship to the States and to purchasers of lieu lands from the various States and calls for action which will enable the United States and the States to adjust and settle these grants.

Section 1 of H. R. 15096 declares that the provisions of sections 2275 and 2276 of the Revised Statutes, as amended by the act of February 28, 1891, are applicable to all grants of school lands heretofore made by Congress, and proposes to ratify and confirm all pending and unapproved indemnity selections heretofore made for losses incurred under the school grants and in accordance with the statutes just cited, if otherwise valid and for nonmineral lands, unless the same have been reserved under the act of June 25, 1910 (36 Stat., 847). With respect to lands so withdrawn, it is provided that selections made prior to such withdrawals may be approved subject to such conditions, limitations, or reservations as may be authorized by present or future acts of Congress. The

latter clause has particular reference to lands withdrawn because of their oil or phosphate content, in which cases the act of Congress of July 17, 1914 (38 L. D., 509), permits, under appropriate conditions, the issuance of a patent for the selected land, reserving to the United States, however, all of the minerals therein, with the right to enter upon the land, extract, and remove such minerals. The last-described clause is only proposed to be made applicable to lands the surface of which is found to be of substantial value for agriculture, grazing, or timber.

Section 2 of the bill proposes a method for the exchange of surveyed school sections in national forests owned by the State and for the taking of indemnity for unsurveyed sections lost to the State by the creation of the forest, providing that the State and the Federal authorities may enter into an arrangement whereby the said lands scattered throughout various parts of the national forest may be surrendered and a solid block or blocks of lands of approximately equal value within the boundaries of any national forest within the State may be acquired in lieu thereof. This is manifestly to the advantage of all parties concerned.

Section 3 proposes to ratify the exchanges heretofore made under the practice of this department of surveyed school sections in place in forest and other reservations for vacant nonmineral public lands of the character described in the bill, and further provides that exchanges in future may be made either in the form provided in section 2 or, at the election of the State, vacant unappropriated nonmineral public lands of equal acreage outside the limits of national forests may be taken in lieu of lands surrendered or relinquished within the forest, or at the discretion of the Secretaries of the Interior and Agriculture State lands outside may be exchanged for lands within national forests.

Section 4 ratifies agreements of exchange heretofore made between the States of South Dakota and Idaho and the United States, concerning consolidation of holdings within national forests in those States.

Section 5 provides that the provisions of the act shall be applicable only where the State is now authorized by law to make such selections, relinquishments, or exchanges, or shall hereafter by constitutional legislative enactment authorize same to be done.

The only amendment I have to suggest to the bill as now presented is the insertion of the word "surveyed" preceding the word "public," in line 3, page 5, so that the clause will read "vacant unappropriated nonmineral surveyed public lands."

As stated herein and in previous correspondence, the department is heartily in favor of the enactment of this measure, believing that it will be of mutual benefit to the States and the Federal Government, and that it will permit of an early adjustment of the school grants. I therefore recommend that it receive the approval of Congress.

Cordially, yours,

FRANKLIN K. LANE, *Secretary.*

Hon. SCOTT FERRIS,
Chairman Committee on the Public Lands, House of Rerpresentatives.

The bill (H. R. 15096) was referred to the Department of Agriculture, and on May 24, 1916, Hon. David F. Houston, Secretary of Agriculture, made favorable report thereon, which report is as follows:

DEPARTMENT OF AGRICULTURE,
Washington, May 24, 1916.

Hon. SCOTT FERRIS,
Chairman Committee on the Public Lands, House of Representatives.

DEAR MR. FERRIS: I wish to acknowledge receipt of a copy of the bill (H. R. 15096) providing for the adjustment of outstanding selections and exchanges of land with the various public-land States and authorizing certain agreements and exchanges for the purpose of adjusting certain grants of public lands to the various States for school purposes. Your committee has requested a report on this bill, together with suggestions and recommendations from this department.

This measure is one of unusual importance, not only to the States directly concerned, but also to the Federal Government, because of the relation such lands bear to the national forests and the public domain. However, this phase of the matter is one which has already been considered in detail, is fully

understood and appreciated by your committee, and therefore does not require specific elaboration.

Careful consideration has been given to the measure now before me, and it is believed that, with a few minor changes, the measure is one which will provide for the adjustment of all outstanding differences, and result in the securing of substantial justice to all parties in interest. It is understood that the changes which I have in mind have already been considered and approved by your commitee.

It is recommended that the bill be amended by inserting after the word "character" in line 10, page 2, the following: "And which were subject to selection at the time the applications were filed."

The purpose of the amendment is obvious. The same wording should also be inserted after the word "character" in line 11, page 4, for the same reasons.

It is recommended that the bill be amended by inserting the following words after the word "may" in line 15, page 4: "Within the discretion of the Secretary of the Interior." Also, that the word "under" be substituted for the word "by" in the same line. Under this section as amended the Secretary of the Interior's authority to approve exchanges of title is confirmed so as to remove present existing doubts, thereby empowering him to approve such exchanges with absolute certainty of legality, while at the same time reserving to him the usual discretion vested in his office, in order that public interests may be protected where the circumstances are such as to justify the disapproval of an application for some specific tract of land. Without the provisions in this section, pending lists, involving a total area of 383,500 acres of land selected by the different States, would be left in uncertainty. Without the restrictive provisions included in this section and its proposed amendment, title to the entire area would be confirmed in the States, regardless of the situation in any special case.

While not specifically called to the attention of your committee hitherto, it would appear desirable to similarly amend section 1 for the same reasons, inserting the same wording after the word "may" in line 13, page 2.

I also recommend that section 3 be amended by including after the word "timber" in line 25, page 4, the following proviso:

"*And provided further*, That all lands within the boundaries of national forests to which title may be vested in the States under the provisions of this act, shall be subject to all rights of way which the Secretary of Agriculture may at any time deem necessary for the administration of the national forests."

In reference to this proviso, it is understood by your committee that a great many unapproved selections lying within the exterior boundaries of national forests will pass to the States under the provisions of this measure. This land is included in lists which were filed with the General Land Office before the land was withdrawn for national-forest purposes. Since then national forests have been established and the lands in question are now surrounded by national-forest timberlands. Without entering into a discussion of the legal rights of the States, based upon such lists, it is recognized that the States have established equities which should be taken into consideration. On the other hand, the interests of the national forests should be safeguarded, so far as this can be done without undue injury to the States or to innocent purchasers from the State. It is believed that the right-of-way provision will meet the situation fairly as to the vast majority of cases. It is also understood that its necessity and fairness is recognized and admitted by the different witnesses who have appeared before your committee on behalf of the State. The necessity of such provision, from an administrative standpoint, is obvious.

The same section, on page 5, should be further amended by inserting after the word "State," in line 3, the following: "and upon the approval of the Secretary of Agriculture"; also by inserting the word "surveyed" after the word "nonmineral" in the same line and same page; also by striking out the word "acreage" in line 4, page 5, and inserting the word "value"; also by inserting after the word "forests," same line and same page, the words "designated by the Secretary of the Interior." The reasons for each of the foregoing suggested amendments are quite apparent, and, it is understood, are fully appreciated by your committee.

The last proviso of the same section should, in the opinion of this department, be amended by inserting after the word "discretion" in line 8, page 5, the following: "if they shall find that the public interest will be subserved thereby."

It is understood that your committee fully understands and appreciates the reasons for this suggested amendment and that the same meets with your ap-

proval. I am unofficially advised that your committee merely desires to empower the two departments to make such exchanges whenever it is in the public interest, but does not wish this proviso to be accepted in any sense as being directory or as expressing any wish or intent upon the part of Congress in opposition to full administrative discretion in deciding when such action would be in the interest of the public.

Very truly, yours,

D. F. HOUSTON, *Secretary.*

The proposed legislation affects the school-land grants in 13 of the Western public-land States, namely, California, Oregon, Nevada, Colorado, Washington, Montana, North Dakota, South Dakota, Idaho, Wyoming, Utah, New Mexico, Arizona.

The amended bill, as reported by your committee to the House and which is hereinbefore set out, represents the consent and approval of the 13 States involved, through their Representatives in Congress, as well as the governors, their State officials having charge of this matter in the several States; likewise the approval of the Department of the Interior and the Department of Agriculture, as well as the unanimous support of the Committee on the Public Lands.

The original bill upon the subject was H. R. 8491, upon which extended hearings were had and consideration given by the committee as well as by subcommittee. At all times the representatives of the Department of the Interior and Department of Agriculture were present to give their assistance and aid to the committee. After such hearings by the full committee and the subcommittee, H. R. 15096 was introduced to take the place of the former bill. H. R. 15096 was again fully considered by subcommittee and then by the full committee and the amendments to H. R. 15096 were approved by the Department of the Interior, the Department of Agriculture, as well as by the full committee, and the committee, therefore, believes that after the extended hearings and the full and careful consideration the bill as amended, which is herewith reported to the House, will fully, fairly, and properly adjust the land matters involved in fairness to the Government and the several States interested; the proposed legislation having the approval, as before stated, of all concerned.

The same matter having been before the Committee on the Public Lands, and involving the same question, the report of the Attorney General of the Department of Justice made on February 7, 1912, is as follows:

DEPARTMENT OF JUSTICE,
Washington, February 7, 1912.

HON. JOSEPH T. ROBINSON,
Chairman Committee on the Public Lands, House of Representatives.

SIR: I have received your letter of February 3, 1912, inclosing for such suggestions and recommendations as may be deemed necessary, a copy of H. R. 19344, Sixty-second Congress, second session, authorizing the Secretary of the Interior to exchange lands for school sections within Indian, military, and other reservations.

This bill authorizes the Secretary of the Interior to make exchanges of lands with the several States for those portions of school sections, whether surveyed or unsurveyed, lying within the exterior limits of any reservation, the exchange to be made in the manner and form and subject to the limitations of sections 2275 and 2276 of the Revised Statutes, as amended by the act of February 28, 1891 (26 Stat., 796), and provides that any such exchange, whether heretofore or hereafter made, shall restore to the United States full title to the base land without any formal conveyance by the State.

I have the honor to advise you that authority to make exchanges of school sections included within the exterior boundaries of reservations, prior to the survey of such school sections, already exists under the act of February 28, 1891, supra. The Department of the Interior also holds that authority likewise exists under the said act of 1891 to make exchanges of school sections included within the exterior limits of reservations even after the survey of such school sections. See 34 Land Decisions, 599, and cases cited, and I understand that many thousands of acres of such lands have been exchanged. However, it has been held by at least one Federal court that the act of 1891 does not authorize a State to exchange school lands which had been surveyed prior to the creation of the reservation within the exterior limits of which the school section is embraced. (Hibbard *v.* Slack, 84 Fed., 579.) It would seem, therefore, that the enactment of some such legislation as that proposed in this bill will serve a useful purpose.

Respectfully,

ERNEST KNAEBEL,
(For the Attorney General),
Assistant Attorney General.

During the same consideration by the Committee on the Public Lands in 1912, the Department of the Interior, on February 19, 1912, Mr. Samuel Adams, Acting Secretary of the Interior, made the following report:

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1912.

HON. JOSEPH T. ROBINSON,
Chairman Committee on the Public Lands, House of Representatives.

SIR: In response to your request for a report on House bill 19344, entitled "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," I have the honor to submit the following:

It is understood that the bill was introduced at the instance of the officials of the State land department of the State of California for the purpose of and with a view to aiding the State in the adjustment of the grant to the State for common-school purposes, which has been in a very unsatisfactory condition and practically a state of suspension for several years. The provisions of the bill are largely declaratory of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the United States Revised Statutes, as construed and administered by the department for a number of years, but as framed expressly authorize exchanges of lands which are within the exterior limits of any Indian, military, national forest, or other reservation. It is also provided that any such exchange, whether heretofore or hereafter made, shall restore full title to the United States to the base land, upon approval of such exchange, without formal conveyance thereof by the State.

School sections in national forests are now held to be subject to exchange under the provisions of the act of 1891, supra, as lands being otherwise reserved, whereas the bill expressly authorizes the exchange of such lands, whether surveyed or unsurveyed, and vests title in the United States to such sections which have heretofore been used as base for selections made and approved to the various States.

Under the act of 1891, as now administered, the exchanges made thereunder are not complete and title to the tracts of land exchanged does not vest in the State until the approval thereof by the Secretary of the Interior, and the subsequent certification of the selections to the State by the General Land Office. The title vests in the contracting parties upon the date of the certification and not on the date of the approval of the selections.

As to the clause in the bill providing that no formal conveyance of the base tracts by the State to the United States be necessary to vest title, it may be stated that no such conveyances have been required by the department for a number of years. In an opinion of the Assistant Attorney General of the department, dated January 26, 1901 (30 L. D., 438), the deed of reconveyance was held not to be necessary, for the reason that the selection of indemnity of itself amounted to a waiver of the State's claim, or, in other words, operated to transfer the legal title of the State to the United States.

In that opinion, the right of the State to indemnity for school lands in forest reserves is dependent solely on the proposition that the selection of indemnity constituted a waiver of the State's claim, and that Congress has full authority

to declare what effect shall be given to such a selection, and no distinction could be based upon the fact that the title to the base lands had or had not vested in the State prior to the selection.

There may have been some doubt heretofore as to the meaning of that clause of section 2275, Revised Statutes, under which exchanges of school lands between the several States and the United States are now effected. If any such doubt has existed, it will be conclusively removed should this bill be enacted into law, and for this reason I recommend that the bill be passed.

Very respectfully,

SAMUEL ADAMS, *Acting Secretary.*

Now, to bring the matter fully before the House, on June 16, 1911, the attorney general of the State of California and the surveyor general of California appeared at Washington and had a conference with the United States Attorney General and also the Secretary of the Interior and the Commissioner of the General Land Office in regard to the lands in the State of California which are tied up and creating a great deal of trouble between those that claimed them—the State and others—and amounting to somewhere from 250,000 to 300,000 acres of land.

This is the basis of adjustment. It reads as follows:

BASIS OF ADJUSTMENT.

(1) That there be paid to the United States, as under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), $1.25 per acre in satisfaction of all excess certifications of indemnity school lands which occurred prior to the date of approval of said act, and for which said lands no payment has as yet been made to the United States.

(2) That new and valid bases be designated by the State for all selections that have been or may be approved, made on basis of lands in sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been or may be, sold or encumbered by the State; provided, however, that new base need not be designated in any case where the United States has disposed of, by patent, the tract in lieu of which indemnity was claimed and granted.

(3) That new and valid bases be designated by the State for approved selections in all cases wherein there have been, or may be, excesses in certifications occuring since March 1, 1877.

(4) That lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), are the property of the United States, and which have been sold or encumbered by the State, are to be selected by the State, it being understood that the requirements of publication of notice and the filing of nonmineral affidavits in support of such selections be waived by the Land Department of the United States.

(5) That the State of California will enact such additional laws as may be necessary to carry into effect the plan of adjustment herein contained, and the Land Department of the Federal Government will favor and will use its good offices to have passed and approved such legislation by Congress as may be necessary to consummate such plan.

(6) That the Land Department will immediately proceed with the listing of all selections made by the State where the base is free from objection and the lands applied for are subject to selection by the State; provided the governor of the State of California shall first agree to specify and state in a call or proclamation for a special or extraordinary session of the State legislature, to be made and held some time during the year 1911, as one of the purposes for which the legislature is so convened, the subject and consideration of such legislation as may be required to consummate the within plan of settlement: *And provided further*, That if such necessary laws be not enacted at such special session the plan of adjustment herein contained may be deemed without force and effect.

Under and in pursuance of this agreement the governor of the State of California included in a call for an extraordinary session of the Legislature of California the provisions contained in this agree-

ment, and thereunder, and on the 24th day of December, 1911, the Legislature of the State of California passed the following act:

CHAPTER 21.—An act to authorize the adjustment and settlement of a controversy existing between the United States and the State of California, in relation to the grants made by Congress to the State of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the State for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof.

[Approved December 24, 1911.]

Whereas under the terms and provisions of certain acts of Congress of the United States 500,000 acres of land were granted to the State for internal improvements and the sixteenth and thirty-sixth sections in each township, and lands in lieu thereof, were granted to the State of California for school purposes; and

Whereas it is claimed by the United States that prior to March 1, 1877, there were listed to the State of California approximately 16,000 acres of land in excess of the amount of land to which the State was justly entitled, also that the State has received indemnity for certain sixteenth and thirty-sixth sections of land assumed to be within the exterior boundaries of Mexican grants, which sixteenth and thirty-sixth sections were subsequently either wholly or partially excluded from such grants and subsequently sold by the State, the total area being approximately 10,151 acres; also that the State has received indemnity for certain sixteenth and thirty-sixth sections, alleged to be mineral in character, which said school sections the State sold in place, either before or after receiving indemnity therefor, the total area being approximately 8,715 acres; also that the State received approximately 2,028 acres in excess of the 500,000-acre grant; and

Whereas the Department of the Interior has for many years withheld from certification the greater part of the lieu land selected by the State, pending a settlement of said matters, and there remains to be listed to the State upward of 450,000 acres, which, if listed, would be subject to taxation; now, therefore,

The people of the State of California do enact as follows:

SECTION 1. There shall be paid to the Federal Government by the State of California, acting through the officers hereinafter mentioned, and in the manner and upon the terms and conditions hereinafter set forth, the sum of one and twenty-five one-hundredths dollars per acre for all excess certifications of indemnity school lands, which occurred prior to March 1, 1877, and for which said lands no payment has as yet been made to the United States.

SEC. 2. The officers of the State of California mentioned in sections 3519 and 3520 of the Political Code of said State, are hereby authorized, empowered, and directed, in the manner in said sections provided, to convey to the United States by patent, or otherwise, such an amount of land in sections 16 and 36, situated in national forests or other reservations, as will equal in area all selections that have been heretofore listed or certified by the Government to the State of California, made in lieu of sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been or may be sold or encumbered by the State: *Provided, however,* That no lands shall be patented in any case wherein it shall be found that the United States has disposed, by patent or otherwise, of the tract in lieu of which indemnity was claimed and granted.

SEC. 3. The officers of the State referred to in section 2 hereof are hereby authorized and directed to convey, by patent or otherwise, to the United States, in addition to the 12,000 acres heretofore granted, an amount of land equal in area to any additional excess in certifications occurring since March, 1877.

The surveyor general of the State of California is hereby authorized and empowered to locate and select in the United States land offices, for the benefit of persons having certificates of purchase or patents from the State, lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877, and commonly known as the Booth Act, are claimed to be property of the United States, but which said lands have been heretofore sold or encumbered by the State. The said lands hereby authorized to be selected are lands which have been heretofore used or designated by the State of California as basis for indemnity selections, and for which the State of California received indemnity, but which said lands in said sections 16 and 36 the said State also sold or encumbered. For the purpose of making the selections hereby authorized to be made the said surveyor general is hereby authorized and empowered

to use and designate any basis or lands mentioned in section 3406*a* of the Political Code of the State of California, or any other basis which may be proper or valid in making indemnity selections.

SEC. 4. For the purpose of carrying into effect the terms and provisions of this act the surveyor general of the State of California is authorized and directed to ascertain and determine from the records of his office and the records of the Department of the Interior the amount of lands which should be conveyed to the United States and likewise the number of acres of land as in this act provided for, which the State has, by the terms of this act, authorized and directed payment to be made, and after said facts have been ascertained and determined, the said officers of said State referred to in sections 2 and 3 hereof are hereby authorized and directed to make, execute, and deliver for said State, in its name and as its act and deed, any and all written agreements, deeds, patents, or conveyances necessary to carry out and consummate the terms of this act.

SEC. 5. The sum of $25,000 is hereby appropriated out of any moneys in the State treasury not otherwise appropriated for the purpose of carrying out the provisions of this act and paying all necessary expenses of the surveyor general and attorney general in connection herewith, and the State controller is hereby authorized and directed to draw his warrant or warrants in favor of the United States, or the proper officers thereof, for such amount as may be payable to said United States under the terms hereof, and also to draw his warrant or warrants for the necessary expenses of the surveyor general and attorney general in carrying out the provisions of this act, and the State treasurer is hereby directed to pay the same.

In originally submitting this matter to the Committee on the Public Lands the Department of the Interior on December 13, 1915, submitted report thereon to the committee, and, although somewhat voluminous, your committee believes that it should be made a part of this report to the House, as it contains a full and complete history and presentation of the entire subject and a special presentation as it relates to each State wherein there are lands involved or affected by this legislation. The report is as follows:

DEPARTMENT OF THE INTERIOR,
Washington December 13, 1915.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands, House of Representatives.

MY DEAR MR. FERRIS: As you are aware, it has been the general practice of Congress to grant to the various States two, and in some instances four, sections of public lands in place for the support of public schools. The act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the Revised Statutes, has in the past been regarded and treated by this department as a general adjustment act, permitting the States to select other vacant nonmineral public lands in lieu of losses to the grant in place; that with respect to the establishment of national forests and other reservations, including within their exterior limits unsurveyed school sections, the reservation operated to defeat the grant in place, but entitled the State to lands in lieu thereof; and that as to school lands surveyed prior to the establishment of such reservations the State might, under the so-called exchange provision of the act, surrender its title to such surveyed school sections in exchange for public lands of the United States. With respect to the school grant made to the States of Washington, Montana, South Dakota, and North Dakota by the act of February 22, 1889 (25 Stat., 676), the Supreme Court of Washington, in the case of the State *v.* Whitney, held, in substance, that the grant was a present one, applicable to all lands, whether surveyed or unsurveyed, and that the act of February 28, 1891, supra, did not operate to repeal or limit the operation of the grant to said States under the act of 1889. In the case of Hibberd *v.* Slack (84 Fed. Rep., 571), involving school sections in California surveyed prior to their inclusion in a reservation, the court held, in substance, that the act of February 28, 1891, supra, does not authorize the State to surrender school lands in place surveyed prior to the creation of the reservation in exchange for other public lands, this upon the theory that the title to the lands in place had vested in the State, and that the latter was without authority to surrender such title for lieu lands. The said decision was followed in the case of the Desert Water, Oil & Irrigation Co. *v.* State of California (138 Pac. Rep., 981), now pending in the Supreme Court of the United States on writ of error. The situation is also complicated,

particularly with respect to those States which were granted school lands in place by the act of February 22, 1889, supra, by provisions in the constitutions of the States and in the law providing that the lands granted shall be disposed of in a specific manner and at not less than a specified price. With respect to this provision, the Supreme Court of Idaho, in Balderston *v.* Brady (17 Idaho, 567), held that the State officials were not authorized to surrender sections in place and take indemnity therefor, but could dispose of school sections only in accordance with the constitutional provision indicated. Subsequently, after the enactment of a law by the State legislature authorizing exchanges, the supreme court, in Rogers *v.* Hawley (19 Idaho, 751), held that the same might be properly consummated.

The situation with respect to these grants is, therefore, that the former rulings and practices of this department have been questioned or controverted by decisions of the State courts, and in one instance by decision of a Federal court, with the result that the department has felt it incumbent upon it to suspend all pending applications for the exchange of lands in such cases and to refuse to entertain further applications therefor. This situation has resulted in delay and hardship to the States and to purchasers of lieu lands from the various States and calls for action which will enable the United States and the States to adjust and settle these grants.

I have, therefore, caused to be prepared and herewith transmit a tentative form of measure which, in the view of the department, would meet the situation provided that appropriate action be had by the several States where necessary to secure on their part the necessary authority to meet the terms of the exchange authorized by Federal law.

Section 1 makes applicable to States, having grants of school lands under certain acts therein described, the provisions of the act of Congress approved February 28, 1891, confirms selections heretofore made and approved thereunder, and proposes to authorize the approval of all pending unapproved selections heretofore made, if otherwise regular, and made for lands subject to selection at date of approval.

Section 2 proposes a plan of adjustment of the school grants in so far as they fall within the exterior limits of national forests, the object being to adjust the grant in a way which will be mutually beneficial to the United States and the States. The plan proposed is designed (1) to enable the several States to consolidate their lands in a solid block, so that they may be handled on a profitable and businesslike basis, and to permit the States to come into immediate possession and use of the full acreage of school lands within national forests to which they might be eventually entitled. (2) It will remedy the embarrassing situation which now exists of having school lands granted in place, two or four sections, being scattered throughout national forests in such a way as to embarrass the Federal Government in the use and administration of national-forest lands, the State being at the same time not in a position to make beneficial use of the isolated and scattered areas. In substance, it permits the State and the United States, acting through the Departments of Agriculture and Interior, to mutually agree for the surrender of the scattered school sections within national forests and the selection in lieu thereof, within the boundaries of any national forest or forests within the State, of a solid block or blocks of land of approximately equal value, and the patenting thereof to the States. The second proviso to the section is designed to permit the consummation of an agreement made between the Department of Agriculture and the State of South Dakota of the character described, which agreement was entered into upon the belief that existing law permitted such an arrangement. It may be stated in this connection that the States of Idaho, Montana, and Washington have indicated a desire to make such exchanges as are proposed in section 2 of this measure, and examinations of lands have been made, or are now in progress, to that end, Congress having in the acts of March 4, 1913, and March 4, 1915, appropriated money to enable the Forestry Service of the Department of Agriculture to make examinations or investigations in the States of Montana and Washington. Undoubtedly, some of the other public-land States will in the future desire to enter into similar arrangements.

Section 3 of the bill is confirmatory and is designed to permit the approval and passing of title to the States of indemnity selections heretofore made in lieu of surveyed school lands in forests or other permanent reservations. It is particularly important to the States which have made such lieu selections and to those who have purchased the selected land from the States in anticipation of the consummation of the exchange. The reason for inserting in the proviso to section 3 the clause respecting an agreement between the Secretary of the Interior and the State of California is briefly as follows: School sections in place approximating in area 7,000 acres were believed to be within the limits of certain private land grants in the State of California, and on the basis thereof the State secured lieu lands. Subsequently, upon final survey of the private grants, it was found that the sections in place in fact lay outside of the grant limits, and the State, assuming that it owned the same, proceeded to dispose of the

same to private individuals. In adjusting the school grant to the State of California this fact was disclosed and the State, in order to protect the purchasers of the land in place and to make reparation for the unauthorized sale of the sections in place, which in fact were not State lands, entered into an agreement with the Secretary of the Interior in 1912 to select the said sections in place, aggregating, as stated, about 7,000 acres in lieu of school sections within national forests. The entire matter of adjustments between the State and the United States has been ratified by the Legislature of the State of California, and should this measure become a law it is important that in order to entirely straighten out the matter the clause just described be included. The situation is limited to the area described, and is present nowhere else.

Section 4 provides that sections 1 and 2 of this measure shall be applicable only where the States shall have by constitutional legislative enactment assented to the terms and conditions of the act of February 28, 1891, supra, this provision being designed to secure the necessary constitutional action by those States where it may be found they are at present without constitutional authority to consummate the exchanges authorized to be made under sections 1 and 2 of this bill.

The existing situation has been the subject of extended investigation by this department, and I inclose a report submitted by the General Land Office setting out in detail the history of the school grants and the operations thereunder. The legislation proposed is urgent and important, both from the viewpoint of the National Government and of the States interested, and I earnestly hope that some such legislation may be had in the near future. Should the tentative measure herewith submitted meet with your approval, I will be glad if you will introduce same.

Very truly, yours,

ANDRIEUS A. JONES,
First Assistant Secretary.

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE ON ADJUSTMENT OF GRANTS IN AID OF PUBLIC SCHOOLS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with your request of December 3, 1914, I have the honor to submit herewith a report with respect to the pending adjustment of the several grants in aid of public schools, especially as to claims for indemnity.

The specific information called for in your request covers so wide a field of investigation that I have deemed it advisable to indicate the order in which the several features will be presented:

1. Call for report.
2. Character of the school grant, as defined by the courts.
3. General legislation regulating indemnity.
   Decisions of the courts and department thereon.
4. Grants to the several States:
   (*a*) State constitutional provisions.
   (*b*) State legislation.
   (*c*) Decisions of the State and Federal courts construing said grants—
      California.
      Oregon.
      Nevada.
      Colorado.
      Washington.
      Montana.
      North Dakota.
      South Dakota.
      Idaho.
      Wyoming.
      Utah.
      New Mexico.
      Arizona.
5. Proposed legislation:
   (*a*) Amendatory act of 1891.
   (*b*) Mineral lands.
6. Tabulated statement of present status of adjustment as to lands within national forests and other reservations.

NOTE.—For exception of mineral land from grants, see Nevada, Utah, and New Mexico.

1. CALL FOR REPORT.

DEPARTMENT OF THE INTERIOR,
December 3, 1914.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: The question of adjusting the school grants to the several public-land States, and particularly the matter of indemnity selections for losses by reason of creation of national forests and other reservations, is, as you are aware, an exceedingly embarrassing and uncertain matter, particularly in view of the peculiar language of the grants to certain of the States, of the peculiar constitutional provisions or lack of constitutional provisions in certain of the States governing exchanges, and of the fact that numerous forest and other reservations have been created since the admission of the several States into the Union.

Various bills have been introduced into Congress and tentative drafts of reports thereupon submitted for the department's consideration, but none seem to cover the field, nor to afford an entirely satisfactory solution of all problems. It occurs to me that we should first ascertain, as nearly as possible, the exact legal and constitutional difficulties which confront us in this particular, the status of the grants to the several States, particularly with reference to existing reservations or withdrawals, and then draft a tentative measure meeting and curing these difficulties and deficiencies.

In connection with House joint resolution 266 you transmitted a tentative draft of report, which report discusses generally the laws and decisions, and gives approximately the acreage of approved and unapproved school indemnity selections made upon the basis of surveyed and unsurveyed school sections within national forests and national parks. There is no statement, however, of the approximate total of school sections within the limits of national forests, national parks, Indian or other reservations in each of the several States, or information as to when the several reservations or withdrawals were made. Neither is there a specific statement as to the exact difficulties, constitutional or legal, in the way of effecting an adjustment in each State.

It occurs to me, therefore, as a basis for further intelligent consideration of the matter, it will be necessary for you to compile from your records a memorandum of statement, which shall first take up, State by State, the exact legal situation under both Federal and State laws, with respect to school sections and indemnity for losses thereof. In each case a statement should be made of the decisions of the courts of that State or of other States which bear upon the right or absence of right of the State or of the Federal Government to consummate exchanges. The difference in the terms of the several enabling acts and of the constitutions of the States renders it important that the peculiar conditions and difficulties applicable to each State be given separately. I would also like a statement of the approximate total acreage of granted school sections within the limits of national forests, national parks, national monuments, Executive order Indian reservations, etc., in addition to the more specific data given in the proposed report on House joint resolution 266. This data, together with the data already collated by you, showing the approved and pending indemnity selections, should enable us to ascertain the amount of land which might be sought to be made the subject of future exchange. I would also like to be advised, approximately, of the acreage of indemnity school selections offered and pending and which selected land is now included within withdrawals or reservations for water-power sites and other withdrawals made under the provisions of the act of June 25, 1910 (36 Stat., 847); also approximate acreage of indemnity school selections pending for lands which have, since date of proffer of the selection, been included within existing national forests, parks, monuments, or Executive order Indian reservations.

The matters involved are so important to the Government, the several States, and incidentally to individuals, and the necessity for comprehensive and decisive legislation curing difficulties and doubts so evident, that I believe the labor involved in securing the data above indicated, and any other data which you may regard material, is fully warranted. This memorandum or tabulation need not be prepared for the States whose grants have been practically adjusted and within whose limits no national forests or parks exist, but should include those public-land States with unadjusted grants, within whose limits exist national parks, national forests, Executive order Indian reservations, and national monuments.

Please refer in your reply to Miscellaneous Docket No. 29583.

Respectfully,

A. A. JONES,
First Assistant Secretary.

2. CHARACTER OF SCHOOL GRANT, AS DEFINED BY THE DECISIONS OF THE COURT.

Heydenfeldt *v.* Daney Gold & Silver Mining Co. (93 U. S., 637):

"The validity of the patent from the State under which the plaintiff claims title rests on the assumption that sections 16 and 36, whether surveyed or unsurveyed, and whether containing minerals or not, were granted to Nevada for the support of common schools by the seventh section of the enabling act approved March 21, 1864 (13 Stat., 32), which is as follows: 'That sections numbered 16 and 36 in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be and are hereby, granted to said State for the support of common schools.'

"This assumption is not admitted by the United States, who, in conformity with the act of Congress of July 26, 1866 (14 id., 251), issued to the defendant a patent to the land in controversy, bearing date March 2, 1874. Which is the better title is the point for decision. As it has been the settled policy of the Government to promote the development of the mining resources of the country, and as mining is the chief industry in Nevada, the question is of great interest to her people.

* * * * * * *

"Congress, at the time, was desirous that the people of the Territory of Nevada should form a State Government and come into the Union. The terms of admission were proposed, and, as was customary in previous enabling acts, the particular sections of the public lands to be donated to the new State for the use of common schools were specified. These sections had not been surveyed, nor had Congress then made, or authorized to be made, any disposition of the national domain within that Territory.

"But this condition of things did not deter Congress from making the necessary provision to place, in this respect, Nevada on an equal footing with States then recently admitted. Her people were not interested in getting the identical sections 16 and 36 in every township. Indeed, it could not be known until after a survey where they would fall, and a grant of quantity put her in as good a condition as the other States which had received the benefit of this bounty. A grant operating at once and attaching prior to the surveys by the United States would deprive Congress of the power of disposing of any part of the lands in Nevada until they were segregated from those granted. In the meantime, further improvements would be arrested, and the persons who prior to the surveys had occupied and improved the country would lose their possessions and labor in case it turned out that they had settled upon the specified sections. Congress was fully advised of the condition of Nevada, of the evils which such a measure would entail upon her, and of all antecedent legislation upon the subject of the public lands within her bounds. In the light of this information, and surrounded by these circumstances, Congress made the grant in question. It is ambiguous; for its different parts can not be reconciled if the words used to receive their usual meaning. Schulenberg *v.* Harriman (21 Wall., 44), establishes the rule that 'unless there are other clauses in a statute restraining the operation of words of present grant, these must be taken in their natural sense.' We do not seek to depart from this sound rule; but, in this instance, words of qualification restrict the operation of those of present grant. Literally construed, they refer to past transactions; but evidently they were not employed in this sense, for no lands in Nevada had been sold or disposed of by any act of Congress. There was no occasion of making provision for substituted lands if the grant took effect absolutely on the admission of the State into the Union, and the title to the lands then vested in the State. Congress can not be supposed to have intended a vain thing, and yet it is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain. It could not, as we have seen, apply to past sales or dispositions, and, to have any effect at all, must be held to apply to the future.

"This interpretation, although seemingly contrary to the letter of the statute, is really within its reason and spirit. It accords with a wise public policy, gives to Nevada all she could reasonably ask, and acquits Congress of passing a law which in its effects would be unjust to the people of the Territory. Besides, no other construction is consistent with the statute as a whole, and answers the evident intention of its makers to grant to the State in praesenti a quantity of lands equal in amount to the sixteenth and thirty-sixth sections in each township. Until the status of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a sixteenth

or thirty-sixth section had been disposed of, the State was to be compensated by other lands equal in quantity, and as near as may be in quality."

Water & Mining Co. *v.* Bugbey (96 U. S., 167):

"In Sherman *v.* Buick (93 U. S., 209) it was decided that the State of California took no title to sections 16 and 36, under the act of 1853, as against an actual settler before the survey, claiming the benefit of the preemption laws, who perfected his claim by a patent from the United States. In such a case the State must look for its indemnity to the provisions of section 7 of the act. As against all the world, except the preemption settler, the title of the United States passed to the State upon the completion of the surveys; and if the settler failed to assert his claim, or to make it good, the rights of the State became absolute. The language of the court is (p. 214):

"'These things (settlement and improvement under the law) being found to exist when the survey ascertained their location on a school section, the claim of the State to that particular piece of land was at an end; and it being shown in the proper mode to the proper officer of the United States, the right of the State to the land was gone, and in lieu of it she had acquired the right to select other land, agreeably to the act of 1826.'

"In that case, the controversy was between the settler, who had perfected his title from the United States, and a purchaser from the State. Here the company does not claim under the settler's title, but seeks by means of it to defeat that of the State, and thus leave the land in a condition to be operated upon by the act of July 26. The settler, however, was under no obligation to assert his claim, and he having abandoned it, the title of the State became absolute as of May 19, 1866, when the surveys were completed. The case stands, therefore, as if at that date the United States had parted with all interest in and control over the property."

Minnesota *v.* Hitchcock (185 U. S., 392):

"Again, the language of the section does not imply a grant in praesenti. It is 'shall be granted.' Doubtless under that promise whenever lands became public lands they came within the scope of the grant. As said in Beecher *v.* Wetherby (95 U. S., 517, 523), with reference to a similar clause in the act for the admission of Wisconsin into the Union:

"'It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section 16 in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted.'"

State of Alabama *v.* Schmidt (232 U. S., 168):

"The gift to the State is absolute, although, no doubt, as said in Cooper *v.* Roberts (18 How., 173), 'There is a sacred obligation imposed on its public faith.' But that obligation is honorary, like the one discussed in Conley *v.* Ballinger (216 U. S., 84), and even in honor would not be broken by a sale and substitution of the fund, as in that case; a course, we believe, that has not been uncommon among the States. See, further, Stuart *v.* Easton (170 U. S., 383)."

The grant, then, in aid of the public schools, as defined by the decisions of the courts, whether the words of grant are "hereby granted," "shall be, and is hereby granted," or "shall be granted," is a present grant, taking effect as to particular tracts of land when identified by survey.

3. GENERAL LEGISLATION.

By the act of May 20, 1826 (4 Stat., 179), Congress appropriated lands for the support of schools, in certain townships, and fractional townships, not before provided for, and fixed a rule for determining the amount of the grant in the case of fractional townships. Section 2 of the act provided:

"That the aforesaid tracts of land shall be selected by the Secretary of the Treasury out of any unappropriated public land within the land district where the township for which any tract is selected may be situated."

This is not an indemnity set, but provides for selections in cases where school lands had not theretofore been appropriated.

The act of February 26, 1859 (11 Stat., 385) grants indemnity for school lands lost by reason of settlements prior to survey, also for deficiencies by reason of the fractional

character of the granted sections, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. It is further provided that the selections and appropriations thus authorized should be taken in accordance with the principles of adjustment found in the act of May 20, 1826 (4 Stat., 179).

Sections 2275 and 2276, Revised Statutes, preserve the principal features of the foregoing acts, making due provision for indemnity and adjustment in accordance therewith.

Section 2275, Revised Statutes, was amended by act of February 28, 1891 (26 Stat., 796), to read as follows:

"Where settlements, with a view to preemption or homestead, have been or shall hereafter be made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, to compensate deficiencies for school purposes where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing."

Section 2276, Revised Statutes, was also amended by said act to read as follows:

"That the lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships such selections shall be made in accordance with the following principles of adjustment, to wit: For each township or fractional township containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township containing a greater quantity of land than one-half, and not more than three-quarters of a township, three-quarters of a section; for a fractional township containing a greater quantity of land than one-quarter, and not more than one-half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one quarter section of land: *Provided*, That the States or Territories which are, or shall be, entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named to compensate for deficiencies of school land in fractional townships."

The provisions of the act of February 28, 1891, have been specifically extended to Utah, New Mexico, and Arizona. See acts of May 3, 1902 (32 Stat., 188), March 16, 1908 (35 Stat., 44), and June 20, 1910 (36 Stat., 557).

Departmental Decisions.

As to the foregoing legislation, the Land Department has held that the acts of May 20, 1826, and of February 26, 1859, are of general applicability to all the States in the adjustment of the school grant. (5 L. D., 545; 13 L. D., 378.)

These statutes, as heretofore noted, form the basis for sections 2275 and 2276, as appearing in the Revised Statutes, and constituted the general law of adjustment of the school grant until the amendatory act of February 28, 1891, since which time the department has held in numerous cases that said sections, as amended, are applicable to all the public land States and operate as a repeal of all special laws theretofore enacted, so far as in conflict therewith (12 L. D., 400; 24 L. D., 12,106; 21 L. D., 220; 23 L. D., 423); or, as stated in a later decision, the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, is a general act establishing a uniform rule with respect to the adjustment of school land grants to the several States, affording each an equal right of indemnity, superseding, so far as is in conflict, all other laws bearing on the same subject. (36 L. D., 89.)

Court Decisions.

The scope of the act of February 28, 1891 (26 Stat., 796), was under consideration in the case of Johnston *v.* Morris, decided February 3, 1896, in the Circuit Court of Appeals, Ninth Circuit (72 Fed. Rep., 890), wherein the court said:

"The contention that the act of February 28, 1891 (26 Stat., 796), amending section 2275 of the Revised Statutes, does not apply to California, is supported by a decision of the Secretary of the Interior, dated July 6, 1892 (State of California, 15 Land Dec. Dep. Int., 10). The Secretary had before him an appeal, taken by the State of California, from a decision of the General Land Office rejecting certain applications by the State to select indemnity school lands upon the basis of townships made fractional by reason of portions thereof being swamp lands. It was contended on the part of the State, among other things, that as the swamp lands situated within the State had been granted to the State by the act of September 28, 1850, those lands had been 'otherwise disposed of by the United States,' and that the State was therefore entitled to indemnity selection for sections 16 and 36 of such lands lost from the school grant by reason of being swamp lands. This contention was based upon the following provision of section 2275 of the Revised Statutes, as amended by the act of February 28, 1891:

"'And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States.'

"The Secretary held that California took her school grant under section 6 of the act of March 3, 1853, and section 6 of the act of July 23, 1866; and that the indemnity provision of section 2275 of the Revised Statutes, as amended, was not applicable to selections made by the State in lieu of the swamp land lost from the school land grant, on the ground that it would be giving to the State an indemnity for a class of lands already donated to the State; and that the principle upon which indemnity is given to the State is for a loss, and not for that which the State has already received. This is a clear and forcible statement of the reason why the State is not entitled to make indemnity selections for school lands which it had already received as swamp lands, but this reason does not apply to losses from the school grant by reason of sections 16 and 36 being mineral lands. Where such sections are found to be mineral lands, here is an absolute loss of such lands to the State, and, to that extent, a clear and unconditional diminution of the school land grant. The policy of Congress has been, clearly, in the direction of an enlargement of the grant to the State, rather than a diminution. When, therefore, the Secretary went beyond the question he had before him, relating to swamp lands, and determined that section 2275, as amended by the act of February 28, 1891, did not give any additional indemnity rights to the States, and that such provisions merely declared the existing laws, he certainly gave to the amendment a limitation not warranted by the legitimate conclusion to be drawn from his own argument; and it appears to be too narrow an interpretation to hold that the amendment only provided an additional right in the adjustment of the grant to make indemnity selections in advance of the surveys, and from any unappropriated public lands in the State or Territory where the loss occurs, instead of from lands most contiguous to the same. A more satisfactory interpretation of the statute as amended is to be found in a prior decision of the Secretary of the Interior, dated April 22, 1891, where it was held that it was intended by the act of February 28, 1891, to provide a uniform rule for the selection of indemnity of lands applicable to all the States and Territories having grants of school lands. This decision is based, mainly, upon the proceedings in Congress, and, particularly, on the report of the Committee on Public Lands of the House of Representatives, reciting and adopting a report previously made to the Senate. This report contained the following statement:

"'In the administration of the law, it has been found by the Land Department that the statute does not meet a variety of conditions, whereby the States and Terri-

tories suffer loss of these sections, without adequate provision for indemnity selection in lieu thereof. Special laws have been enacted in a few instances to cover, in part, these defects with respect to particular States or Territories; but, as the school grant is intended to have equal operation and equal benefit in all the public-land States and Territories, it is obvious the general law should meet the situation, and partiality or favor be thereby excluded. * * * The bill as now framed will cure all inequalities in legislation, place the States and Territories in a position where the school grant can be applied to good lands, and largest measure of benefit to the school funds be thereby secured.' (22 Cong. Rec., p. 3632.)

"In construing a statute, aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted. (U. S. *v.* Union Pac. R. Co., 91 U. S., 72; Platt *v.* Railroad Co., 99 U. S., 48; Smith *v.* Townsend, 148 U. S., 490, 13 Sup. Ct., 634.)

"From the statement of the committee, it appears very clearly that the statute was intended to be general in its terms, and applicable alike to all the States and Territories receiving grants of school lands; and such appears to be the view now held by the Secretary of the Interior, who, under date of September 27, 1895, so interpreted the statute in a decision relating to a settlement before survey on school lands in the State of Nebraska. (21 Land Dec., Dep. Int., 220.)"

The possible effect to be given the act of February 28, 1891 (26 Stat., 796), upon prior school grants, is referred to in Minnesota *v.* Hitchcock (185 U. S., 400):

"In other words, the act of admission with its clause in respect to school lands was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized, and provision made for a selection of other lands in lieu thereof. In this connection may also be noticed the act of February 28, 1891, although passed after the approval of the agreement for the cession of these lands by the Indians. This act in terms authorized the selection of other lands 'where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States.' "

Exchange Provision of the Act of February 28, 1891—Decisions of the Department.

The first decisions rendered by the department after the passage of this act, held that it provided for an "exchange of title" between the State and the United States, as well as indemnity in case of a State loss. (Henry C. King, Mar. 8, 1892, 14 L. D., 232; Gregg *v.* Colorado, Aug. 5, 1892, 15 L. D., 151; McNamara *v.* State of California, Sept. 21, 1893, 17 L. D., 296.)

Later the department adopted a different view. (17 L. D., 576, Dec. 19, 1893; State of California, 19 L. D., 585, Dec. 27, 1894.)

Still later, January 8, 1897 (Rice *v.* California, 24 L. D., 14), the earlier doctrine was again announced, while yet later, January 30, 1899 (28 L. D., 57), this view was again adopted, which has since been followed, so far as reported cases go. (Dunn *v.* State of California, 30 L. D., 608; Opinion Jan. 26, 1901, 30 L. D., 438; State of California, id., 484; Territory of New Mexico, 29 L. D., 364; id., 399; Territory of New Mexico, 34 L. D., 599; State of California, 34 L. D., 613.)

Under these rulings a large number of selections, based upon the principle of exchange, were made and carried to certification, wherein were designated as bases sections 16 and 36 in forest reservations that were established subsequent to the public survey.

This construction of the act of 1891 has been the subject of two judicial decisions in which the view of the department did not meet with approval. Both of these cases arose in connection with the adjustment of the California grant and will be considered in connection therewith.

4. GRANTS TO THE SEVERAL STATES.

State of California.

The State was admitted to the Union by act of September 9, 1850 (St. Sat., 452).

The grant of school lands to California was made by act of March 3, 1853 (10 Stat. 244), section 6 of which provides:

"That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be, and hereby are, granted to the State for the purposes of public schools in each township

* * * shall be subject to the preemption laws of fourth September, eighteen hundred and forty-one."

And section 7:

"That where any settlement, by the erection of a dwelling house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other lands shall be selected by the proper authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled 'An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for,' and which shall be subject to approval by the Secretary of the Interior."

By section 1, act of July 23, 1866 (14 Stat., 218), all selections made in part satisfaction of any grant made to the State by any act of Congress and sold to purchasers in good faith are confirmed; and by section 6 further provision is made for indemnity in cases of certain specified losses as settlements before survey, reservations, Mexican grants, other private claims.

By the act of March 1, 1877 (19 Stat., 267), the confirmation of certain selections was declared and a scheme for the adjustment of certain invalid selections as follows:

"That the title to the lands certified to the State of California, known as indemnity school selections, which lands were selected in lieu of sixteenth and thirty-sixth sections, lying within Mexican grants, of which grants the final survey had not been made at the date of such selection by said State, is hereby confirmed to said State in lieu of the sixteenth and thirty-sixth sections, for which the selections were made.

"SEC. 2. That where indemnity school selections have been made and certified to said State, and said selection shall fail by reason of the land in lieu of which they were taken not being included within such final survey of a Mexican grant, or are otherwise defective or invalid, the same are hereby confirmed, and the sixteenth or thirty-sixth section in lieu of which the selection was made shall, upon being excluded from such final survey, be disposed of as other public lands of the United States: *Provided*, That if there be no such sixteenth of thirty-sixth section, and the land certified therefor shall be held by an innocent purchaser for a valuable consideration, such purchaser shall be allowed to purchase the same at one dollar and twenty-five cents per acre, not to exceed three hundred and twenty acres for any one person: *Provided*, That if such person shall neglect or refuse, after knowledge of such facts, to furnish such proof and make payment for such land it shall be subject to the general land laws of the United States."

The provision in the body of section 2, in effect, operates as an "exchange of title" between the State and the United States. It was so treated in the case of Durand *v.* Martin (120 U. S., 366):

"The selection was confirmed and the United States took in lieu of the selected lands that which the State would have been entitled to but for the indemnity it had claimed and got. In its effect this was an exchange of land between the United States and the State.

STATE CONSTITUTION.

No limitation is found in the constitution of the State of California upon the price for which school lands shall be sold, or direction given as to the manner of such sale.

STATE LEGISLATION.

By section 3398 of the Political Code of 1909, the surveyor general is declared the general agent of the State for the location in the United States land offices "of the lands desired to be selected and located in lieu of the sixteenth and thirty-sixth sections granted to the State for the use of the public schools, and in lieu of any and all losses sustained by the State to its school grants, whenever he is authorized by law to make such location or locations or whenever for any reason he is authorized to select lands in lieu of grants made to the State."

This section as amended April 21, 1913 (Stat. 1913, p. 47) now reads as follows:

"SEC. 3398. The surveyor general is the general agent of the State for the location in the United States land offices of the lands desired to be selected and located in lieu of the sixteenth and thirty-sixth section granted to the State for the use of the public schools, and in lieu of any and all losses sustained by the State to its school grant, whenever he is authorized by law to make such location or locations, or whenever for any reason he is authorized to select lands in lieu of grants made to the State; but no such selection or reselection, designation or redesignation or amended selection shall hereafter in any manner be made, except upon the sur-

render to the surveyor general, as in this article provided, of a certificate of indemnity or scrip. The surveyor general shall not perfect or amend or correct any selection, reselection, amended selection, designation, or redesignation made on or before March 24, 1909, or take any action whatever in relation thereto or thereon, unless the request therefor is accompanied by certificates of indemnity or scrip equal in acreage to the selected lands, or the portion of such selection desired to be corrected, or amended or designated or redesignated, and also, unless the said selection, reselection, amended selection, designation, or redesignation was duly received by the register or receiver of the local United States land office, and given a register and receiver's number and duly forwarded to the General Land Office at Washington, District of Columbia, and became and now is a part of the records of such General Land Office at Washington, District of Columbia. No selection of any land for which a certificate of purchase is outstanding shall be made by the surveyor general until the certificate of purchase issued therefor shall have been surrendered. Nothing herein contained shall be held or construed to mean that prior to the passage hereof the surveyor general was authorized to perfect, or amend or correct any selection, reselection, amended selection, designation, or redesignation, except upon the surrender to the surveyor general of a certificate of indemnity or scrip." (Amendment approved Apr. 21, 1913; Stat. 1913, p. 47.)

The Thompson Act of March 24, 1909, was enacted to meet conditions following the decision of the Federal court in Hibbard *v.* Slack (84 Fed. Rep., 571), wherein the court held in subtance, that the act of February 28, 1891, does not authorize any exchange of lands between the Federal and State Governments, but only the indemnification of the State for the loss of lands to which it was entitled; and further, that the act does not give to the State the right to select other lands of equal acreage with the school sections where the latter are included within the exterior boundaries of a forest reservation subsequent to the survey in the field and the title thereto has thus become vested in the States.

Section 3406–A:

"All sixteenth and thirty-sixth sections situated within the exterior boundaries of a permanent reservation, and also all losses sustained by the State to its school grants shall be and constitute valid bases for indemnity selections as contemplated by this article and by law, but said base shall only be available when sold and indemnity certificates or scrip issued therefor, and the surveyor general is authorized and empowered to forward to the United States land offices selections based thereon and where based upon surveyed school sections included within the exterior boundaries of permanent reservations, if the lands applied for are finally listed to the State in lieu of such surveyed school sections constituting such bases, then, and in that event, the title of the State to such bases shall vest in the United States without further act on the part of the State, and the title of the State to such bases shall be deemed to have been conveyed to the United States as of the date of such listing. All selections heretofore made by the surveyor general and which are now pending before the Land Department of the United States based upon surveyed school sections situated within the exterior boundaries of a permanent reservation shall be, if accepted by the United States Land Department, deemed to be valid bases, and, upon the listing of such lands the title of the State to such surveyed school sections shall pass to and vest in the United States. * * *

Section 3408–B:

"That all sixteenth and thirty-sixth sections, both surveyed and unsurveyed, which may be now or may hereafter be included within the exterior boundaries of a national reservation, or of a reserve, or within the exterior boundary of lands withdrawn from public entry, shall be and are hereby withheld from sale by the State, and the same shall hereafter be used only as bases for indemnity selections as in this article provided. * * * And the surveyor general is prohibited from receiving or filing any application for any lands in place within any such reservation or the exterior boundaries thereof after the correction thereof or after such lands have been withdrawn from public entry, and he is likewise prohibited from designating or using any base or bases which may now or which may hereafter exist for indemnity selection or selections except as herein provided; and if any applications shall be filed contrary to the provisions hereof said applications shall be null and void and shall be canceled by the surveyor general, and if the same shall have been filed through inadvertence or mistake, or if the surveyor general shall, after the withdrawal of such lands from public entry, have received any application, by any applicant claiming the right to have the lands in said application described selected or located in lieu of any of said lands so withdrawn from public entry, or by reason of any fact entitling the State to make an indemnity selection the said application shall likewise be null and void, and the said applicant shall have no right to have the lands applied for

by him selected in lieu of the lands designated by him, or in lieu of any lands in said reservation, or for any reason or fact whatsoever."

Section 3408–C, also found in said act of March 24, 1909, provides that the surveyor general shall determine the amount of land the State is entitled to and keep a record of what the bases of the indemnity claims consist.

"In determining the bases in lieu of which the State is entitled to indemnity, the surveyor general shall also include all sixteenth and thirty-sixth sections which were surveyed at the time of the withdrawal of such lands from public entry or at any time thereafter: *Provided, however*, that should the Land Department of the United States determine such surveyed sections are improper or invalid bases, then the surveyor general shall not be required thereafter to consider or treat said surveyed sections as valid or any bases for indemnity selections."

By section 3408–D, also from said act of March 24, 1909, provision is further made for the sale at public auction to the highest bidder for cash to persons qualified to purchase State lands, indemnity certificates or scrip, with limitation as to the qualifications of the purchaser, the acreage of the indemnity certificates, and the manner in which such certificates may be used in the subsequent location of lieu lands. (Stats., 1909, p. 680.)

By the act of April 24, 1909, the title to lands selected by the State in lieu of surveyed school sections within the exterior boundaries of national reservations was validated.

"SECTION 1. The selection of all lands heretofore made by the surveyor general from the Government of the United States in lieu of surveyed school sections situated within the exterior boundaries of national reservations created by proclamation of the President of the United States and which have been listed to the State of California, and also all such selections which are now pending before the Land Department of the United States when listed to the State, are hereby declared to be good and valid, and to vest the title of the United States and the State when said State shall have issued its patent therefor, to such lands in the applicant, his successors or assigns, for whom such selection was made, and the title of the State of California in and to such surveyed school sections so used as bases for such indemnity selections shall vest in the United States at the date of such listing to the State and the title of the said State shall be deemed to be released and quitclaimed to the said United States at the time of such listing to the State as aforesaid.

"SEC. 2. This act shall take effect from and after its passage." (Stats. 1909, p. 1091.)

By act of April 21, 1913, Consolidated Supplement 1911 and 1913, page 540, provision is made for the sale of certain school lands not situated within the exterior boundaries of a military, Indian, or forest reservation created by authority of the United States, or of a national forest, national park, or national monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes; and also directed:

"The sixteenth and thirty-sixth sections of school lands which are situated within the exterior boundaries of a military, Indian, or forest reservation created by authority of the United States, or of a national forest, national park, or national monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes, are withdrawn from sale. Nothing herein contained shall be construed as a recognition that the said sixteenth and thirty-sixth sections last above referred to have not heretofore been withdrawn from sale."

DECISIONS OF THE COURTS ON EXCHANGE QUESTION.

The amendatory act of 1891 does not authorize any exchange of lands between the Federal and State Governments, but only the indemnification of the State for the loss of lands to which it was entitled. The act does not give to the State the right to select other lands of equal acreage with the school sections where the latter are included within the exterior boundaries of a forest reservation subsequent to the survey in the field, and the title thereto has thus become vested in the State. (Hibberd *v.* Slack, 84 Fed. Rep., 571; Deseret Water, Oil & Irrigation Co. *v.* The State of California, 138 Pac. Rep., 981.)

THE LAKE PROTESTS.

Due to the decisions of the department as heretofore cited, and the judicial holdings to the contrary with respect to the exchange provisions of the act of 1891, and relying upon the latter, Fred W. Lake, of Oakland, Cal., representing a large number of applicants, made application to the State surveyor general, for the purchase of surveyed school sections in place within forest reserves, and November 29, 1909, so advised the General Land Office, and of the further fact that suits in the courts of the

State, to enforce rights acquired by such applications had been brought in some of the cases and were then pending, and that the purpose of his letter was to put the department upon notice of the claims thus asserted to the school lands in place. This protest is now pending in the department (D–29027), in connection with which a report was made by this office December 5, 1914, calling attention to the decision rendered July 25, 1914, in the District Court of Appeals of the First Appellate District of the State of California, in the case of Frank H. Ayers et al *v.* W. S. Kingsbury, State Surveyor General and ex officio Register of the State Land Office, wherein it appears that a petition for a writ of mandamus to compel the State officials to receive an application for the purchase of school lands from the State was denied; and that the supreme court on September 23, 1914, refused to entertain a petition for a hearing in said matter.

The State of Oregon.

By act of Congress approved February 14, 1859 (11 Stat., 383), the State was admitted to the Union.

By section 4 of the act of admission, several propositions were submitted to the people of the State for their consideration as follows:

"The following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit: First, that sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools."

The State of Oregon, by its legislature, June 3, 1859 (Lord's Oregon Laws, p. 29), accepted the above proposition with the others thus submitted.

STATE CONSTITUTION.

The constitution of Oregon was adopted prior to the act of admission, hence no reference is found therein to the disposition of the specific sections subsequently granted to the State.

STATE LEGISLATION.

Section 3881, Lord's Oregon Laws:

"Classification of State lands.—For the purpose of this act the State lands shall be classified as follows: (a) School lands: Sections sixteen and thirty-six in each township granted to the State by act of Congress approved February fourteenth, eighteen hundred and fifty-nine; all lands selected for internal improvements under the act of Congress of September fourth, eighteen hundred and forty-one, and all lands selected for capital building purposes under the act of Congress approved February fourteenth, eighteen hundred and fifty-nine. (b) Indemnity lands: Lands selected to satisfy losses in sections sixteen and thirty-six, as provided by the laws of the United States. * * *"

Section 3895:

"Board to fix price of certain lands—Minimum.—The State land board may fix the price at which school, university, college, and swamp lands may be sold: *Provided, however*, That no such lands shall be sold for less than $2.50 per acre."

Section 3897:

"Indemnity lands—Minimum.—The price of indemnity land shall be fixed from time to time by the State land board: *Provided, however*, That no such lands shall be sold for less than $5 per acre."

Section 3930:

"State land board may purchase lands in school sections in forest reserves.—The State land board is hereby authorized, in its discretion, to purchase lands in school sections within national forest reserves in Oregon, and to pay therefor an amount or amounts not exceeding the total in principal and interest actually paid to the State for the particular tract or tracts in question."

Section 3931:

"Minimum price when used as base.—In case lands acquired under the provisions of section thirty-nine hundred and thirty are used as bases for indemnity selections, the lands selected shall not be sold at less than the minimum price per acre, as provided in section thirty-eight hundred and ninety-seven."

Section 3932:

"Board may permit purchase of indemnity land.—The State land board shall have authority, in its discretion, to permit a person or corporation reconveying land to the State under this act to purchase all or any part of the land selected on

said reconveyed land as base: *Provided*, That application for the land to be selected is presented at the time reconveyance of the land to be used as base is offered to the State."

These sections, 3930, 3931, and 3932, were repealed by act of the legislature adopted February 11, 1911 (General Session Laws, p. 65).

COURT DECISIONS.

United States *v.* Cowlishaw et al. (202 Fed. Rep., 317), arose under the Oregon school grant.

"The language of the act is 'shall be granted.' This has never been construed, that I am aware of, as a grant in præsenti, but it rather looks to the future, as depending on some future act or event, and as not to become effective until such act or event has taken place or happened. It is manifest that the act is not a grant of all sections 16 and 36 within the territorial limits of the State; for it provides that if such sections, or any part thereof, have been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted. This again raises the inquiry as to when the grant is to become effective as an actual transfer of the lands to the State. As to the lands to be granted in the place of the school sections, or any part thereof, sold or otherwise disposed of, it is very plain that there could be no passing of title until they were identified by some approved method of selection from the public domain. * * *

"It would seem to be a logical deduction from these authorities, therefore, that the grant of the school sections does not vest the title thereof in the State until they have become identified through a survey determining their location. In further support of this view, see also Hibbard *v.* Slack (C. C.), (84 Fed., 571), and State of Oregon (L. D.), decided July 5, 1912.

"As to the case of Beecher *v.* Wetherby (95 U. S., 517; 24 L. Ed., 440), there may be found expressions in the opinion seemingly opposed to this view; but the case itself does not seem to have been so considered by the Supreme Court in the Hitchcock case, although commented upon at some length. Furthermore, the case was decided subsequent to the Heydenfeldt case, with but a year intervening, and, although cited in the briefs of counsel, it was not referred to in the opinion of the court, so that we can not infer that it was the intention to overrule that case."

The school grant of Oregon was also under consideration in the case of Cobban *v.* Hyde (212 Fed. Rep., 480), as follows:

'The theory of the defense, which is quite urgently presented, is, in substance, that the terms of the Oregon enabling act operated as a grant in præsenti, and, upon the acceptance by the State of its provisions, the State became clothed with an indefeasible right to all the public lands within its borders which should thereafter be ascertained by actual survey to be embraced within the sixteenth and thirty-sixth sections; that, although title to the particular sections did not formally vest until the survey thereof was approved, the State was potentially clothed with the title for the reason that by the force of its terms the sixteenth and thirty-sixth sections were irrevocably appropriated to the use of the State, subject only to be thereafter identified by survey, and were thereby withdrawn from other sale or disposition by the United States; that it was thereafter not within the power of the Congress, or the President acting under subsequent legislation, to reserve or appropriate such lands or any part thereof to any other use; that the State had a perfect right to sell such lands in anticipation of the survey, and, upon such survey being made and approved, it inured to the benefit of the State and its grantees and operated to vest absolute title in fee thereto.

"From this promise it is argued that notwithstanding the decision of the Land Department to the contrary a perfect title to the lands involved had vested in Baldwin at the time of the sale by defendant to plaintiff and the giving of the guaranty above set out; that the latter paper is therefore not to be construed as guaranteeing in Baldwin a valid title, which he already had, but as warranting only the regularity of the various steps therein recited as vesting such title; that, so construed, the guaranty affords no consideration for the notes sued on, but they must be held to have been given under a misapprehension by defendant of his legal obligation thereunder. From this statement it will be observed that the essential question upon which the defense rests is whether the language of the enabling act is susceptible of the construction which the defendant thus seeks to place upon it.

"In reaching his conclusion that title to the lands involved never vested in the State of Oregon, the Secretary of the Interior said in his opinion:

" 'It is a well-established principle that the title of the State to the granted sections does not vest until they have been designated by an approved survey, and

that until the survey of the lands and the vesting of title Congress has absolute power and control over the granted sections and may dispose of them in any manner that it may deem proper, leaving the State to its right to indemnity therefor. That has been so frequently determined by the Supreme Court as to be no longer a subject of controversy. (Heydenfeldt *v.* Daney Gold Mining Co., 93 U. S., 634; 23 L. Ed., 995.) Furthermore, the question was directly decided in Minnesota *v.* Hitchcock (185 U. S., 373–400; 22 Sup. Ct., 650; 46 L. Ed., 954); totidem verbis the same as the grant to the State of Oregon. In that case the court said that "the act of admission, with its clause in respect to school lands, was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized, and provision made for the selection of other lands in lieu thereof." (See also Wisconsin *v.* Hitchcock, 201 U. S., 202; 26 Sup. Ct., 498; 50 L. Ed., 727.)'"

"These views of the honorable Secretary would seem to be fully sustained by the authorities referred to by him."

The case of Morrison et al *v.* United States, in the Circuit Court of Appeals, Ninth Circuit, February 2, 1914 (212 Fed. Rep., 29), involved a consideration of the school grant to the State of Oregon where, after reciting the history of the reservation for the Territory and the subsequent grant to the State on its admission, the court said:

"The proposition so submitted to the people of Oregon having been accepted by them, it can not be doubted, we think, that the legislation of Congress amounted to a congressional grant to that State of all the sixteenth and thirty-sixth sections for school purposes, to which no right of any third party attached prior to the proper identification of such sections.

"Such identification of the lands here in controversy was first made by the survey in the field June 2, 1902, which survey, it appears, was approved on the same day by the United States surveyor general for the State of Oregon, and by him transmitted to the General Land Office on the 8th of the same month, where it remained unaltered until its express approval by that office on the 31st day of January, 1906, and where in the meantime it met with recognition and was acted upon to identify the lands in question by the Commissioner of the General Land Office on the 12th and 19th days of December, 1905, and by the Secretary of the Interior on the 16th day of December, 1905, in making his order of withdrawal relied upon by the Government in the present case. The fact that there was a delay of about three and one-half years in the express approval of the survey by the Commissioner of the General Land Office is, in our opinion, wholly unimportant, and by no means unusual. The approval, when made, under the familiar doctrine of relation adopted by the courts for purposes of justice, related back to the inception of the proceeding, thereby perfecting the grant which was promised by the Government when Oregon was a Territory, and confirmed when it, as a State, accepted the propositions offered by Congress in its enabling act of 1859. It was, as said by the Supreme Court in a similar case—

"'An unalterable condition of the admission, obligatory upon the United States, that section 16 in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially accepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; or, if any further assurance of title was required, to provide for the execution of proper instruments to transfer the naked fee, or to adopt such further legislation as would accomplish that result. They could not be diverted from their appropriation to the State.' (Beecher *v.* Wetherby, 95 U. S., 517; 24 L. Ed., 440.)"

The State of Nevada.

Admitted by proclamation October 31, 1864 (13 Stat., 749).

By the Territorial organic act of March 2, 1861 (12 Stat., 209, sec. 14), provision was made:

"That when the land in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be,

and the same is hereby, reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same."

Section 7 of the State enabling act of March 21, 1864 (13 Stat., 30), made the following grant:

"That sections numbers sixteen and thirty-six, in every township, and where such sections have been sold or otherwise disposed of by act of Congress other lands equivalent thereto in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools."

STATE CONSTITUTION.

By article 11, section 3, all lands, including the sixteenth and thirty-sixth sections, donated for the benefit of public schools, as well as other lands granted by Congress for educational purposes, and the proceeds thereof are solemnly pledged and set apart for educational purposes.

FEDERAL LEGISLATION.

A limitation upon the grants of public lands to Nevada, in so far as minerals may be found therein, was made by the act of July 4, 1866 (14 Stat., 85):

"That in extending the surveys of the public lands in the State of Nevada the Secretary of the Interior may, in his discretion, vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country; and in all cases lands valuable for mines of gold, silver, quicksilver, or copper, shall be reserved from sale."

The provisions of this act were accepted by the State through its legislative assent of February 13, 1867.

By the act of June 16, 1880 (21 Stat., 287), the original grant in place of school lands to the State of Nevada was changed to a grant of quantity in the manner following:

"Whereas, the Legislature of the State of Nevada on March eighth, eighteen hundred and seventy-nine, passed an act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections therein, and relinquishing to the United States all such sixteenth and thirty-sixth sections in said State as have not been heretofore sold or disposed of by said State, and which act of said State is in words as follows, to wit:

"'An act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections, and relinquishing to the United States all such sixteenth and thirty-sixth sections as have not been sold or disposed of by the State.

"'The people of the State of Nevada represented in senate and assembly do enact as follows:

"'SECTION 1. The State of Nevada hereby accepts from the United States not less than two millions of acres of land in the State of Nevada in lieu of the sixteenth and thirty-sixth sections heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by the State prior to the enactment of any such law of Congress granting such two millions or more acres of land to the State shall not be changed or vitiated in consequence of or by virute of such act of Congress granting such two millions or more acres of land, or in consequence of or by virtue of this act surrendering and relinquishing to the United States the sixteenth and thirty-sixth sections unsold or undisposed of at the time such grant is made by the United States.

"'SEC. 2. The State of Nevada, in consideration of such grant of two millions or more acres of land by the United States, hereby relinquishes and surrenders to the United States all its claims and title to such sixteenth and thirty-sixth sections in the State of Nevada heretofore granted by the United States as shall not have been sold or disposed of subsequent to the passage of any act of Congress that may hereafter be made granting such two millions or more acres of land to the State of Nevada: *Provided*, That the State of Nevada shall have the right to select the two millions or more acres of land mentioned in the act':

"Therefore

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act.

"SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated, nonmineral, public land in said State, in quanti-

ties not less than the smallest legal subdivision; and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior.

"SEC. 3. The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the Legislature of the State of Nevada: *Provided*, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said State.

"SEC. 4. This act shall take effect from and after its passage."

DECISIONS OF THE DEPARTMENT.

The policy of Congress, in dealing with mineral lands, as expressed in the statutory rule of construction prescribed by the joint resolution of January 30, 1865 (13 Stat., 567), was recognized in the Secretary's instructions of May 20, 1870 (Copp's U. S. Mining Decisions, 31), wherein it was said:

"SIR: I have received your letter of the 10th instant, in relation to the right of the State of Nevada to sections 16 and 36 of each township, for school purposes, when such sections are found to contain mines.

"The seventh section of the enabling act of 21st March, 1864, passed at the first session of the Thirty-eighth Congress, grants to said State said sections, unless sold or otherwise disposed of by any act of Congress.

"Joint resolution of the 30th January, 1865 (13 Stat., 567), declares: 'That no act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations, to aid in the construction of roads, or for other purposes, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be, and are, reserved exclusively to the United States, unless otherwise specially provided in the act, or acts, making the grant.'

"This joint resolution prescribes a rule of construction which, applied to the act, would exclude from its operation mineral lands. Such lands are reserved exclusively to the United States unless 'otherwise specially provided' in the act making the grant.

"In view of this legislation, and of the considerations set forth in your letter, it seems to be clear that an executive officer must regard a section of land, No. 16 or 36 situate in Nevada and 'rich in minerals,' as the property of the United States and not as passing to the State under the act and should deal with it accordingly."

DECISIONS OF THE COURTS.

The announcement of the Supreme Court of the United States that Congress followed a settled policy in the disposition of mineral lands, and that a grant, therefore, of sections 16 and 36 for school purposes did not include mineral lands, though such lands were not in terms excepted therefrom, was first made at the October term, 1876, in the case of Heydenfeldt *v.* Deney Gold & Silver Mining Co. (93 U. S., 634); but, not resting its decision entirely on this general conclusion, the court said:

"These views dispose of this case; but there is another ground equally conclusive. Congress, on the 4th of July, 1866 (14 Stat., 85), by an act concerning lands granted to the State of Nevada, among other things, reserved from sale all mineral lands in the State and authorized the lines of surveys to be changed from rectangular, so as to exclude them. This was doubtless intended as a construction of the grant under consideration; but whether it be correct or not, and whatever may be the effect of the grant in its original shape, it was clearly competent for the grantee to accept it in its modified form and agree to the construction put upon it by the grantor. The State, by its legislative act of February 13, 1867, ratified that construction and accepted the grant with the conditions annexed.

"We agree with the Supreme Court of Nevada that this acceptance 'was a recognition by the legislature of the State of the validity of the claim made by the Government of the United States to the mineral lands.'

"It is objected that the constitution of Nevada inhibited such legislation, but the supreme court of the State, in the case we are reviewing, held that it did not (10 Nev., 314); and we think their reasoning on this subject is conclusive."

COMMENT.

The grant to this State has been included herein, for the reason that it was under its provisions the Supreme Court first recognized the "policy" of Congress in dealing with mineral lands as an essential element in the construction of the school grant, a doctrine which received a fuller discussion and broader recognition in the later case of Mining Co. *v.* Consolidated Mining Co. (102 U. S., 167).

Prior thereto Congress had by the joint resolution of January 30, 1865, supra, and the act of July 4, 1866, supra, definitely indicated its purpose to exclude mineral lands from the school grant, and this intention was carried into effect by the department May 20, 1870, supra, from all of which the reasons moving the State to ask for a grant of quantity, in lieu of one in place, are fully apparent.

The State of Colorado.

The grant of school lands was made to this State by the enabling act of March 3, 1875 (18 Stat., 474), by which it is provided:

"Sec. 7. School lands.—The sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto in legal subdivisions of not more than one-quarter section, and as contiguous as may be, are hereby granted to said State for the support of common schools."

"Sec. 14. School lands—How sold.—That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than $2.50 per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of common schools.

"Sec. 15. Mineral lands excepted.—That all mineral lands shall be excepted from the operation and grants of this act."

The State was admitted to the Union by proclamation of the President August 1, 1876 (19 Stat., 665).

STATE CONSTITUTION.

Article 9 of the constitution provides:

"Sec. 9. State board of land commissioners. The governor, superintendent of public instruction, secretary of state and attorney general, shall constitute the State board of land commissioners, who shall have the direction, control, and disposition of the public lands of the State, under such regulations as may be prescribed by law.

"Sec. 10. Selection and control of public lands.—It shall be the duty of the State board of land commissioners to provide for the location, protection, sale, or other disposition of all the lands heretofore or which may hereafter be granted to the State by the General Government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the General Government by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The general assembly shall, at the earliest practicable period, provide by law that the several grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of said grants."

STATE LEGISLATION.

The Revised Statutes of Colorado, 1908, provide:

"5181. Sale of school lands—Auction—Minimum price (sec. 62).—All lands granted by Congress to the State for the support of common schools, being sections sixteen and thirty-six, and all that may be selected in lieu of said sections, are hereby withdrawn from market, and the sale thereot prohibited: *Provided*, Parcels of not less than forty acres of such land may be sold when the State board is of the opinion that the best interests of the school fund will be served by offering such parcel for sale: *Provided further*, That such land shall only be sold at public auction, and at not less than $3.50 per acre: *Provided*, That school lands shall not be offered for sale except upon the conditions hereinafter provided for the sale of other State lands."

"5218. Exchange of lands in forest reserves (sec. 99).—The State board of land commissioners is hereby authorized and empowered to exchange any lands the income from which is devoted to the public schools of Colorado, the State university, the State agricultural college, penitentiary, internal improvements, saline or any other lands which may be under the control of said State of Colorado by the Congress of the United States, and which lands are situated within the exterior boundary line of any Federal forest reserve which may have been heretofore, or shall be hereafter established, for such unappropriated Federal lands in the State of Colorado as the

State board of land commissioners may select; and the register of said land board is hereby empowered to sign all papers necessary to such transfer, under the direction of said board."

STATE OF WASHINGTON.

By sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota, to enter the Union, a grant of school lands was made as follows:

"SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

"SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

"SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

"SEC. 19. That all lands granted in quantity or as indemnity by this act, shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects."

The State was admitted to the Union by proclamation, November 11, 1889.

Act of December 18, 1902 (32 Stat., 756):

"That in all cases where sections sixteen and thirty-six, or either or any of them, or any portion thereof, have been occupied by actual settlers prior to survey thereof, and the county commissioners of the counties in which said sections so occupied as aforesaid are situated, have, under said act of Congress of March second, eighteen hundred and fifty-three, located or selected other lands in sections or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid, the lands so located or selected, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State by said act of February twenty-second, eighteen hundred and eighty-nine, and the title of said State thereto is hereby confirmed.

"SEC. 2. That where any lands appropriated by Congress to said Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, or where section sixteen or thirty-six were patented by pre-empters, have been selected and appropriated as provided in said act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, the lands so selected and appropriated, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State of Washington by the said act of February twenty-second, eighteen hundred and eighty-nine, and the title thereto confirmed."

STATE CONSTITUTION.

By Article XVI, section 1, of the constitution adopted by the State of Washington, it is provided:

"All the public lands granted to the State are held in trust for all the people, and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States."

Section 2 of the same article makes the following provision:

"None of the lands granted to the State for educational purposes shall be sold otherwise than at public auction to the highest bidder; and the value thereof, less the improvements, shall, before any sale, be appraised by a board of appraisers, to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of improvements thereon shall be excluded."

STATE LEGISLATION.

Section 6650, General Statutes of Washington:

"The board of State land commissioners shall have authority and power to relinquish to the United States all lands heretofore selected by the Territory of Washington, or any officer, board, or agent thereof, or by the State of Washington, or any officer, board, or agent thereof, or which may be hereafter selected by the State of Washington, or any officer, board, or agent thereof, in pursuance of any grant of public lands made by the United States or the Congress thereof to the Territory or State for any purpose or upon any trust whatever, the selection of which has failed or been rejected, or shall fail or shall be rejected for any reason."

Section 6661, General Statutes, provides for the appraisement and sale of lands granted to the State after due inspection and classification, at a price of not less than $10 per acre for lands granted for educational purposes. By section 6635, paragraphs 1, 2, and 3, Codes and Statutes of 1913, the following provisions are made:

"SEC. 6635–1. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the State for common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the State, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the State to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of State land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the State, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of this act, of lands of the United States of equal area and value.

"SEC. 6635–2. Upon the making of any such agreement, the board of State land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the State, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in section 6635(1), and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the State in lieu of the lands aforesaid, to the end that the State shall obtain lands in lieu thereof of equal area and value.

"SEC. 6635–3. Whenever the title to any lands selected under the provisions of this act shall become vested in the State of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the State of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the State relinquished under the provisions of this act, which deed shall convey to and vest in the United States all the right, title and interest of the State of Washington therein."

DECISIONS OF THE STATE AND FEDERAL COURTS.

In Wheeler *v.* Smith (5 Wash., 704) the court, commenting on the reservation of sections 16 and 36 created by the act of 1853, for the subsequent State of Washington, said:

"This section had been followed up by section 10 of the enabling act approved February 22, 1889, before the plaintiff's placer locations were made, making a present grant of sections 16 and 36 to the State, to take effect as soon as the State was organized."

The language thus used, however, was applied in a case where an effort was made to secure title under a public land law to a school section after the passage of the enabling act and the survey of the land.

State of Washington *v.* Whitney (120 Pac. Rep., 116). This decision of the Supreme Court of the State of Washington passed upon two questions, namely, (1) the character of the grant as made by the enabling act, and (2) the effect of the amendatory act of February 28, 1891.

Under the first point it held:

"We therefore hold that the words of grant in our enabling act are words of present grant, and that when, by the adoption of its constitution, the State affirmed the provisions of the enabling act and such constitution was approved by the United States, and the State of Washington thereupon fully admitted into the Union, the grant defined in the enabling act took effect as of its date and passed the entire title of the United States as fully and completely as though such sections 16 and 36 had been previously surveyed and were then capable of exact identification."

Under the second point it was held that the act of Congress February 26, 1859 (11 Stat., 385), was a general act relating to preemptions and provided that where settlements made before a survey of the lands in the field were found to have been on sections 16 and 36, such sections should be subject to preemption claim of the settler. The amendment of this general statute by the act of February 28, 1891 (26 Stat., 796), was not intended to nor did it operate as a repeal of the enabling act, which was special in its character and limited to the States then under consideration.

The State of Washington *v.* Johanson (26 Wash., 668). This case involved the title of a school indemnity selection made and approved prior to the enabling act, as against a settler subsequent thereto.

The court recited at length the provisions contained in the act of March 2, 1853 (10 Stat., 172), reserving lands for the benefit of the Territory; the act of February 26, 1859 (11 Stat., 385), providing for indemnity, and applicable to all the Territories; and, finally, of the enabling act of February 22, 1889 (25 Stat., 676).

The court pointed out at considerable length that the provisions authorizing indemnity selections on behalf of the Territory were made for the protection of settlers, of whom it was said:

"It was known that such settlers would occupy these lands in advance of the surveys. The injustice of denying a bona fide settler the right to acquire title to land he should so occupy and improve in ignorance of its true location was so manifest that legislation was necessary for its protection. * * *

"The conditions anticipated by Congress actually happened, settlements were made upon the public domain within the Territory prior to the extension of the public surveys over it. Certain of these settlements were found to fall within sections 16 and 36, and the Government, recognizing the settler's prior rights, patented the land to the settler. In lieu of certain lands occupied and lost to the use of the common schools in this way the board of county commissioners, pursuant to authority expressly granted them by Congress, selected the lands in controversy. This selection was pursuant to the same authority approved by the Secretary of the Interior. The lands so selected stood from that time until the passage of the enabling act withdrawn from settlement in place instead of lands which by that act, would, without question, have passed to the State under the descriptive terms in section 10 thereof had they not 'been sold or otherwise disposed of.' * * *

"Reading all of these acts together, there can be no mistake as to the intent of Congress. It intended these lands for the use of the common schools of the State, and intended to grant them to the State for that purpose when it passed the enabling act."

On appeal, this case was considered by the Supreme Court of the United States (190 U. S., 179), wherein the decision of the State court was affirmed, the court saying:

"Tested by this rule, it is obvious that Congress intended that Washington should receive full sections 16 and 36, or, in case of a failure by reason of prior settlement or from natural causes, the equivalent of such sections, and designated the Secretary of the Interior as the officer to approve any selections made by the Territory. The

act of 1859 is as applicable to Washington as to any other Territory, notwithstanding that there was a special statute passed in 1853 in respect to it. While ordinarily a special law is not repealed by a subsequent general statute, unless the intent so to do is obvious, yet there is no rule which prevents the latter from applying to cases not provided for by the former. It is true the act of 1859 refers to the act of 1826 in reference to selections, and the act of 1826 designated the Secretary of the Treasury as the officer to select. * * *

"But still further, it appearing that some question had been mooted as to the intent of Congress in respect to these matters the confirmatory statute of 1902 was enacted, and that obviously removes all doubt. It confirms the title to selected lands 'when the same shall have been approved by the Secretary of the Interior.' This does not refer alone to future action by the Secretary, but ratifies that which he has already done. He has approved this selection and the act of 1902 places the title of the State beyond controversy."

DEPARTMENTAL DECISIONS.

In the case of Washington *v.* Geisler, decided March 8, 1913 (41 L. D., 621), the department collated its prior decisions construing the grant to this State, considered the decision of the State court in State *v.* Whitney (120 Pac. Rep., 116), and adhered to its former line of decisions that the State takes no title until the school sections are identified by survey, and that prior thereto it is competent for Congress to make other disposition of the land.

SPECIAL PLAN OF ADJUSTMENT BETWEEN THE STATE AND DEPARTMENT OF AGRICULTURE—MEMORANDUM OF AGREEMENT.

It is agreed between the Department of Agriculture of the United States of America, through D. F. Houston, the Secretary of Agriculture, and the State of Washington, through Clark V. Savidge, its commissioner of public lands, with the consent and approval of the board of State land commissioners and the attorney general of said State, acting under and pursuant to chapter 102 of the laws of Washington for 1913, that the following plan of adjustment may be adopted to the end that the State of Washington may satisfy deficiencies of lands granted to the State for common-school purposes (secs. 16 and 36), occasioned by the inclusion of such lands prior to survey thereof within the national forests and the Olympic National Monument in said State, and by homestead settlements thereon prior to survey and inclusion within the reservations named, and that the details of such plan are to be worked out as soon as practicable.

First. In order to carry out the plan above expressed, it is agreed that a representative be appointed by the Secretary of Agriculture and a representative be appointed by the Board of State Land Commissioners of the State of Washington, and that such representatives shall make, with such assistance as may be necessary (*a*) an examination upon the ground of all school sections within the above-named reservations unsurveyed at the time of the establishment of such reservations, excepting those which have already been relinquished to the United States as a basis for the selection of lieu lands; and (*b*) an examination upon the ground of all school sections within such reservations upon which settlements were made prior to survey and inclusion within such reservations and have not been abandoned, for the purpose of determining the value and area thereof, and shall report their findings to the Secretary of Agriculture and the commissioner of public lands for final approval.

Second. Such representatives shall also make an examination upon the ground of lands equivalent in area and value to the school sections mentioned in paragraph one hereof lying within the present boundaries of national forests in the State of Washington in such position that when eliminated therefrom all will lie outside the new exterior boundaries of such forests, to the end that upon such elimination such lands may be available for selection in lieu of the lands mentioned in paragraph one hereof. It is agreed that the lands to be eliminated for selection by the State shall include an area sufficient to compensate the State as nearly as possible for areas, if any, lost through the existence of fractional school sections resulting from the public land surveys within such reservation.

Third. It is agreed that upon the completion of the examination of the lands in the field as herein provided and upon agreement of the Secretary of Agriculture and the board of State land commissioners as to the lands to be selected in lieu thereof, the Secretary of Agriculture will recommend to the Congress that it enact legislation to permit the selection of the lands by the State.

Fourth. It is agreed that the salary and expenses of the representatives above referred to who is to be appointed by the Secretary of Agriculture shall, if the Congress upon

recommendation of the Secretary shall appropriate sufficient funds for the purpose, be paid by the United States Department of Agriculture, and that the salary and expenses of the representative appointed by the commissioner of public lands shall be paid by the State of Washington, and that the salaries and expenses of any assistants employed by such representatives to carry out this agreement shall be borne jointly by the United States and the State of Washington, provided that Congress shall have previously appropriated sufficient funds to pay the share of the salaries and expenses of such assistants to be borne by the United States under this agreement.

Fifth. The undersigned agree to the above proposition and agree to carry it out as far as they have official power and authority to do so.

D. F. HOUSTON,
Secretary of Agriculture.
C. V. SAVIDGE,
Commissioner of Public Lands of the State of Washington.

DECEMBER 22, 1914.

Approved.

C. R. JACKSON,
J. W. BIRSLAWN,
E. W. FERRIS,
Board of State Land Commissioners of the State of Washington.
W. V. TANNER,
Attorney General of the State of Washington.

NOTE.—To enable the Secretary of Agriculture to carry out this agreement, Congress made an appropriation of $50,000 by act of March 4, 1915 (38 Stat., 1113). No. exchanges have yet been effected under this plan.

THE STATE OF MONTANA.

The grant of lands for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant, see State of Washington, herein.

The State was admitted to the Union by proclamation November 8, 1889.

STATE CONSTITUTION.

Article 17 of the State constitution:

"All lands of the State that have been or that may be hereafter granted to the State by Congress * * * shall be public lands of the State, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated, or devised; and none of such land, or any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States."

STATE LEGISLATION.

Section 2153, Code of Montana, 1907:

"No land heretofore granted the State must be sold for less than $10 per acre, but where land is not worth such sum it may be leased for a term not exceeding five years and at a rental to be determined by the board."

Section 2161, Code of 1907, regulating the sale of school lands, also provides:

"No land shall be sold for less than $10 per acre nor for less than its appraised value, and the amount of the purchase money to be paid at the time of the sale will be not less than thirty per cent of the whole amount."

Section 2155:

"All selections of land must be made in legal subdivisions, and when the selection has been made and approved by the board, the governor must take the necessary steps to procure the approval of the Secretary of the Interior and the issuance of patents for the same by the United States to the State of Montana: *Provided*, That not more than two hundred thousand acres shall be selected in any one county of the

State, unless it shall satisfactorily appear to the State board of land commissioners that no lands can be selected in those counties of the State wherein a less quantity than two hundred thousand acres have been selected."

Section 2159:

"That no further selections of any indemnity school land or of any land for any of the State institutions of learning, or for public buildings, shall be made in any county in which the State has already selected one hundred thousand acres or more of lands in the aggregate for such purposes."

Section 2195 authorizes the governor to execute any deeds of conveyance necessary to correct errors or mistakes arising in the adjustment of the school grant, or the distribution of lands included therein.

Section 2212 authorizes the sale to the United States for reclamation purposes of any land now or hereafter owned by the State of Montana and needed for such irrigation and reclamation work to the United States at the minimum price of $10 per acre, together with a right of way over all lands owned by the State for ditches, canals, tunnels, etc., in furtherance of the reclamation of arid lands by the United States.

[Senate bill No. 161. Introduced by committee on public lands.]

AN ACT Authorizing the State land board to contract and agree with the United States for the waiver of the State's rights to unsurveyed school sections in forest reserves, and to accept lands in lieu thereof, and validating agreements heretofore made for that purpose.

Be it enacted by the Legislative Assembly of the State of Montana:

SECTION 1. That the State Board of Land Commissioners of the State of Montana, be, and are hereby, authorized and empowered to enter into contracts or agreements with the United States, or any department thereof, having jurisdiction, waiving and relinquishing to the United States any and all rights of the State of Montana in and to sections sixteen and thirty-six of each township, when said sections are situated within a Federal forest reserve, and are at the date of such contract, or agreement unsurveyed: *Provided*, That the State of Montana shall in lieu of the rights so waived and relinquished, receive from the United States other lands equal in area or value, and all contracts or agreements heretofore entered into between the State Board of Land Commissioners of the State of Montana, and the United States or any department thereof relative to the waiving by the State of Montana of its rights to sections sixteen and thirty-six in any township in said State and the selection of lieu lands therefor by said State either according to area or value be and the same are hereby ratified, confirmed, and validated.

SEC. 2. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act shall be in full force and effect from and after its passage and approval.

W. E. McDOWELL,
President of the Senate.
J. E. McNALLY,
Speaker pro tempore of the House.

Approved March 5, 1915.

S. V. STEWART, *Governor.*

Filed March 5, 1915, at 2.45 o'clock p. m.

A. M. ALDERSON, *Secretary of State.*

SPECIAL INDEMNITY.

At the last session of Congress, an act "authorizing the Secretary of the Interior to survey the lands of the abandoned Fort Assinniboine Military Reservation and open the same to settlement," received the approval of the President February 11, 1915 (Public, No. 244).

Section 7 of this act provided in part:

"That sections sixteen and thirty-six of the land in each township within said abandoned Fort Assinniboine Military Reservation, except those portions thereof classified as coal or mineral lands, shall be reserved for the use of the common schools of the State of Montana, and are hereby granted to the State of Montana: *Provided*, That the State may, if it so elects within one year from the date of the passage of this Act, accept subject to the reservation in the United States of the coal deposits therein the portion of said sections sixteen and thirty-six classified as coal lands, in full satisfaction of the grant herein made for common schools: *Provided*, That for all lands lost to the State because classified as coal or mineral indemnity may be taken as provided for in sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes."

DEPARTMENTAL DECISIONS.

In State of Montana *v.* Fannie Lipscomb, decided April 14, 1915 (not yet reported), the department, after a full citation of the authorities, again announced its adherence to the conclusion that the grant made by the act of February 22, 1889, must be administered and adjusted under the provisions of the amendatory act of February 28, 1891.

SPECIAL PLAN OF ADJUSTMENT, BY AGREEMENT, BETWEEN THE STATE AND AGRICULTURAL DEPARTMENT.

Memorandum of agreement made and entered into this 23d day of December, 1912, between the Department of Agriculture of the United States, through James Wilson, the Secretary of Agriculture, and the State of Montana, through Edwin Norris, its governor, looking toward a settlement and adjustment of all matters relative to the unsurveyed school lands within the national forests in the State of Montana.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable.

That as to all unsurveyed school sections included within the national forests in the State of Montana, excepting those lost to the State by homestead settlement or which have already been relinquished to the United States as a basis for the selection of lieu lands, it is agreed that the State shall relinquish her claims and select as lieu lands other lands equivalent in acreage and values, lying along and within the present boundaries of the national forests in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forests.

In order to carry out the proposition above expressed, it is further agreed that a representative appointed by the State Land Board of Montana and a representative appointed by the Secretary of Agriculture at the earliest possible date shall make, with such assistance as may be necessary, an examination upon the ground of the lands comprising the unsurveyed school sections to be relinquished and the lands to be selected in lieu thereof, and shall report their conclusion to the State land board and the Secretary of Agriculture for final approval.

In making lieu selections as above provided, it is understood that the State will select the equivalent area in several large tracts, some of which will be principally valuable for their timber and others for their forage, but that the State may have the right to select smaller tracts of not less than one section in any case.

It is further understood that after the representatives above mentioned have agreed upon the selections of lieu lands within the present boundaries of the national forests and along the boundaries thereof, as nearly as may be, equivalent in value to the sections 16 and 36 surrendered, that the Secretary of Agriculture will recommend an Executive order eliminating the lands so selected from the national forests, so that new boundaries thereto may be created and the lands so selected by the State be entirely without the national forests and be subject to the exclusive direction and control of the State, provided that the law at that time is such that the lands surrendered by the State will become a part of the national forest.

It is further understood that the salary and expenses of the representative above referred to appointed by the State Land Board shall be paid by the State of Montana, and the salary and expenses of the representative appointed by the Secretary of Agriculture shall be paid by the United States Department of Agriculture, and other expenses involved in making the examination of these areas shall be borne half by the State of Montana and half by the Forest Service.

The undersigned agree to the above proposition and agree to carry them out as far as they have official power and authority to do so.

[SEAL.] W. M. HAYS,
Acting Secretary of Agriculture.

[SEAL.] EDWIN L. NORRIS,
Governor of Montana.

NOTE.—No exchanges in pursuance of this agreement have yet been effected.

THE STATE OF NORTH DAKOTA.

The grant of lands for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant see State of Washington herein.

The State was admitted to the Union by proclamation, November 2, 1889.

STATE CONSTITUTION.

Article 9 of the State constitution, section 155:

"After one year from the assembling of the first legislative assembly the lands granted to the State from the United States for the support of the common schools may be sold upon the following conditions and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the State shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words 'coal lands' shall include lands bearing lignite coal."

Section 158:

"No land shall be sold for less than the appraised value and in no case for less than $10 per acre."

STATE LEGISLATION.

Section 186, Revised Codes 1899, provides for the manner of sale and—

"No tract shall be sold for less than its appraised value and in no case for less than $10 an acre."

Section 204, Revised Codes, authorizes execution of deeds of reconveyance to the United States to correct errors in adjustment of the grant.

Section 216, Revised Code of 1899:

"No more than one-fourth of the common school lands of the State shall be sold within the first five years after they become salable under the provisions of sections 155 of the constitution nor more than one-half of the remainder within ten years after the same shall become salable as aforesaid. The residue may be sold at any time after the expiration of such ten years: *Provided, however*, That the coal lands of the State shall not be sold, but may be leased under the provisions of any law governing such leases. The words 'coal lands' include lands bearing lignite coal."

Act of March 13, 1901 (Assembly Laws 1901, p. 174) authorizes the lease of:

"All the common school lands and all other public lands of the State that are not of such value as will admit of appraisal at $10 or more per acre at the time of any regular appraisal."

SPECIAL INDEMNITY.

By an act approved March 2, 1907, Congress authorized the State of North Dakota to select other lands in lieu of lands erroneously entered in sections 16 and 36 within certain military reservations as follows:

"That the State of North Dakota be, and is hereby authorized to select, in lieu of lands embraced in homestead entries made and erroneously allowed prior to the passage of this act for lands in sections sixteen and thirty-six, within the limits of the abandoned Fort Rice and Fort Abraham Lincoln military reservations, in said State, other unappropriated surveyed nonmineral public lands of equal area situated within the limits of said State, in the manner provided in the Act approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes:' *Provided*, That such selection of lands by said State shall be a waiver of its right to the lands embraced in said homestead entries." (34 Stat., 1218.)

See "General legislation" herein as to character of grant to this State.

THE STATE OF SOUTH DAKOTA.

The grant for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant see State of Washington herein.

The State was admitted to the Union by proclamation November 2, 1889.

STATE CONSTITUTION.

Article 8 of the constitution provides, by section 4:

"After one year from the assembling of the first legislature, the lands granted to the State by the United States for the use of the public schools may be sold upon

the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the State, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

"The commissioner of schools and public lands, the State auditor, and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all schools land within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale.

"They shall take care to first select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest price may be obtained therefor."

Section 5:

"No lands shall be sold for less than the appraised value, and in no case for less than $10 an acre."

STATE LEGISLATION.

Section 370, Revised Codes, 1903:

"Not more than one-third of the lands of any class granted to the State for educational or charitable purposes shall be sold within the first five years, and not more than two-thirds of such lands shall be sold within the first fifteen years after the date of the vesting of title thereto in the State. No more than one-tenth of the lands granted by the act of Congress of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," and vested in the State of South Dakota by section 14 of the act of Congress of February twenty-second, eighteen hundred and eighty-nine, entitled "An act to provide for the division of Dakota into two States and enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Uniton on an equal footing with the original States, and to make donations of the public lands to such States," shall be offered for sale in any one year. Subject to the limitations herein expressed and contained in the constitution of the State and said acts of Congress, the board of school and public lands shall determine from time to time the quantity of lands of each class granted which shall be selected, and the quantity of each class which shall be selected in each of such counties. The board shall so apportion "the quantity to be selected that the most valuable lands may first be selected and designated for sale."

Section 374:

"No land shall be sold for less than the appraised value and in no case for less than $10 an acre."

(This section follows constitutional provision noted above.)

See also section 34, page 362, Assembly Laws of 1911, where similar provision is made.

SPECIAL ADJUSTMENT THROUGH AGREEMENT BETWEEN FORESTRY AND STATE.

In order to reach an amicable agreement between the Federal Government and the State of South Dakota for the disposition of such school sections as are situated within the Black Hills and Harney Forests, in the State of South Dakota, the following agreement was entered into by the Forest Service, United States Department of Agriculture, under the approval of the Secretary, and the commissioner of schools and public lands for the State of South Dakota:

Memorandum of agreement between the Bureau of Forestry of the Department of Agriculture of the United States, through Mr. Gifford Pinchot, Forester, and the State of South Dakota, through its commissioner of schools and public lands, O. C. Dokken, and its attorney general, S.W. Clark, looking to a settlement and adjustment of matters of difference relative to school lands in the Black Hills Forest Reserve.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable:

1. As to the school sections, understood to be four in number, to which title vested in the State by reason of survey prior to the creation of a national forest: These will remain the property of the State and are not affected by this agreement.

2. As to all school sections not surveyed prior to the creation of the national forest: All the lands included therein, excepting those lost to the State by homestead settlement or entry, the State agrees to relinquish her claims and to select as lieu lands other lands equivalent in acreage and values, lying along and within the present

boundaries of the national forest in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forest.

3. That as to acreage of lands that have been entered or settled upon by homestead claimants, consisting so far as present known of about 40 entries, the question whether the State may select other lands in lieu thereof from national forest lands in the same manner as indicated in subdivision 2 hereof is left open for further consideration.

In order to carry out the purposes above expressed it is further agreed that a board shall be constituted composed of one representative appointed by the State and one by the Forester, the two to select a third, which board shall, at the earliest practicable date, make an examination upon the ground of the lands comprising the school sections to be relinquished and the lands to be selected in lieu thereof, the decision of said board to be final upon the question of equivalency.

In making lieu selections, as above provided, it is understood that the State may have the right to select this equivalent area in one or more large tracts or many smaller tracts, not less than one section in any case.

It is further understood that, after the board above mentioned has agreed upon the selections of lieu lands within the present boundaries of the reserve and along the boundaries thereof as nearly as may be equivalent in value to section 16 and 36 surrendered, that the Forester will use his best efforts to secure an executive order eliminating the lands so selected from the forest reserve, so that new boundaries thereof may be created and the lands so selected by the State be entirely without the forest reserve and be subject to the exclusive direction and control of the State.

The undersigned agree to the above proposition and agree to carry them out so far as they have official power and authority so to do.

January 4, 1910.

GIFFORD PINCHOT,
Forester.

O. C. DOKKEN,
Commissioner of Public Lands of South Dakota.

S. W. CLARK,
Attorney General for the State of South Dakota.

This agreement was forwarded to the Representatives to Congress from South Dakota for consideration and comment, and received the following indorsement:

Having been in conference and taking into consideration the above agreement, we hereby approve the same and agree to assist in carrying out these provisions as far as our official power extends.

January 17, 1910.

COE I. CRAWFORD,
ROBERT J. GAMBLE,
Senators.

EBEN W. MARTIN,
CHAS. H. BURKE,
Representatives.

In accordance with said agreement such action was taken and had, with the approval of the Secretary of the Interior, that the boundaries of said national forests were so modified by proclamation of the President February 15, 1912 (37 Stat., 1729), as to permit the State to receive by certification to the present time, 11,577.69 acres.

DEPARTMENTAL DECISIONS.

The department held, in South Dakota *v.* Riley (34 L. D., 657), that the State takes no title to any particular land until it is identified by survey, and prior to such identification the grant may be wholly defeated by settlement, leaving the State to assert its right for indemnity under the amendatory act of February 28, 1891. This was followed in the case of South Dakota *v.* Delicate (34 L. D., 717).

The department held, however, in special instructions (35 L. D., 158), that the title of the State under the grant of 1889, is not affected by the inclusion of the land within a forest reservation prior to survey; that the State, if it does not desire to await extinguishment of the forest reserve, may select other lands in lieu of those included therein. This case cites the decision in the Riley case, and declares that it was not intended to hold therein that the establishment of a forest reservation, prior to survey, defeats the title of the State.

Again, in the case of the Black Hills National Forest (37 L. D., 469), it was said by the department that if the national forest is a permanent reservation, within the meaning of section 10 of the granting act, the school sections therein are, by the terms

of said act excepted from the grant for school purposes; but if on the other hand the national forest is only a temporary reservation within the meaning of that act, the title of the State will not attach so long as the reservation exists, in view of the fact that the lands were unsurveyed at the time the reservation was established.

THE STATE OF IDAHO.

The grant for the benefit of common schools was made by sections 4 and 5 of the act of admission, July 3, 1890 (26 Stat., 215), as follows:

"SEC. 4. That sections numbered sixteen and thirty-six in every township of said State, and where such sections or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

"SEC. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

"SEC. 13. That all mineral lands shall be exempted from the grants by this act. But if sections sixteen and thirty-six, or any subdivision, or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, the said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State.

"Sec. 14. That all lands granted in quantity or an indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects."

STATE CONSTITUTION.

Section 8 of article 9 of the constitution provides:

"It shall be the duty of the State board of land commissioners to provide for the location, protection, sale, or rental of all the lands heretofore, or which may hereafter be, granted to the State by the General Government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: *Provided*, That no school lands shall be sold for less than $10 per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the General Government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of lands were made, and the legislature shall provide for the sale of said lands from time to time for the sale of timber on all State lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed one hundred and sixty acres to any one individual, company, or corporation."

STATE LEGISLATION.

Section 1579, Revised Codes, directs the manner in which State lands shall be sold and declares:

"No land shall be sold for less than its appraised value nor for less than $10 per acre."

Section 1583 makes provision for the sale of State lands in conformity with the classification of farm units where Federal irrigation works justify such action.

Act of March 13, 1909 (Assembly Laws of 1909, p. 331), authorizes the State land board to enter into contracts with the Secretary of the Interior with respect to the irrigation of State lands adjacent to national irrigation projects.

Senate concurrent resolution No. 8:

"*Be it resolved by the Legislature of the State of Idaho:*

"Whereas, by an act dated July third, eighteen hundred and ninety, Congress granted to the State of Idaho about three million acres of public lands, including sections sixteen and thirty-six in every township of the State, for the support of common schools and in aid of various public institutions, with the right, where sections sixteen and thirty-six or any part thereof had been sold or otherwise disposed of by or under the authority of any act of Congress, to select other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same was taken; and

"Whereas, by an act dated August eighteenth, eighteen hundred and ninety-four, Congress granted to the State of Idaho the right to apply for the survey and withdrawal of townships of public lands then remaining unsurveyed, and that such townships should be reserved upon the filing of the application for said survey from any adverse appropriation by settlement or otherwise, except under rights that might be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, and pursuant to said act of Congress the State of Idaho made application for the survey of a large number of townships of public lands within the State of Idaho for the purpose of selecting the quota of lands donated the State; and

"Whereas the President of the United States has by proclamation established certain forest reserves within the State of Idaho embracing more than twenty-eight per cent of the total area of the State, including sections sixteen and thirty-six aforesaid, and the Department of the Interior has by rules and regulations denied the right of the State of Idaho to perfect its selections of public lands in townships now included in the forest reserves, but which were not included within the forest reserves at the time of the State's application for the survey thereof; and

"Whereas approximately one million acres of the lands so donated to the State of Idaho have not been selected and there are not sufficient unappropriated public lands within the State of Idaho outside such forest reserves of the value of $10 per acre to enable the State to make selection thereof; and

"Whereas the State board of land commissioners of Idaho have heretofore pretended to renounce the title of the State of Idaho to certain sections sixteen and thirty-six, amounting to more than two hundred thousand acres, and announces its intention of using such relinquished lands as a basis for making selections of other public lands, and such action of the State board of land commissioners was not authorized by any act of the Legislature of the State of Idaho and was in violation of the express terms of the admission bill and the constitution of Idaho: Therefore be it

"*Resolved*, That the State of Idaho hereby proclaims, declares, and asserts its ownership and title to all sections sixteen and thirty-six in every township granted by the United States to the State of Idaho and not heretofore disposed of by the State, in accordance with the donation act and the constitution and laws of the State of Idaho: Be it further

"*Resolved*, That the State board of land commissioners is hereby required to insist upon the right of the State to complete and perfect the State's selection of public lands in the forest reserves where the State made application for survey prior to the creation of such forest reserves, and that the board take all necessary proceedings to establish such right in the State: Be it further

"*Resolved*, That the Congress of the United States is hereby memorialized to require the Department of the Interior to ascertain what portions of sections sixteen and thirty-six, or any subdivision, or portion of any smallest subdivision, thereof, in any township, may be mineral lands, and to certify the same to the State of Idaho so that the State may select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof for the use and benefit of the common schools of said State: Be it further

"*Resolved*, That the representatives of Idaho in Congress be and they are hereby directed to aid the State board of land commissioners in establishing the right of the State to complete and perfect its title to public lands in forest reserves initiated by filing an application for the survey thereof: Be it further

"*Resolved*, That the Secretary of State forthwith transmit a copy of this resolution to each Representative in Congress from the State of Idaho: Be it further

"*Resolved*, That the State board of land commissioners and the legal department of the State of Idaho is hereby advised to take such steps as will bring about an early

determination by the Supreme Court of the United States of the question of the rights of the State to the sections sixteen and thirty-six included within forest reserves as hereinbefore stated."

Passed senate March 2, 1909.

Passed house March 4, 1909.

(Session Laws of 1909, p. 442.)

Act of February 8, 1911 (Session Laws 1911, p. 16):

"*Be it enacted by the Legislature of the State of Idaho:*

"SECTION 1. That the State board of land commissioners be, and is hereby, authorized, empowered, and directed to judiciously ascertain and locate the general grants of land made by Congress to the State of Idaho, and when said board shall find that sections sixteen and thirty-six, or any part or parts thereof, in every township of the State were sold or otherwise disposed of by or under the authority of any act of Congress prior to July third, eighteen hundred and ninety, on the admission of the State of Idaho into the Union, or said lands are found by the Secretary of the Interior, or the Secretary of Agriculture when necessary, select from the surveyed, unreserved, and unappropriated lands of the United States within the limits of the State of Idaho other lands equivalent thereto in area and value in legal subdivisions of not less than one-quarter section and as contiguous as may be to the section in lieu of which the same is taken.

"SEC. 2. That when the State board of land commissioners shall ascertain that sections sixteen and thirty-six, or any part thereof, granted to the State have been actually settled upon prior to the survey thereof by the General Government and are occupied by bona fide settlers claiming title thereto under the homsetead laws of the United States, then the said board shall be, and is hereby, authorized and empowered in its discretion, by and with the approval of the Secretary of the Interior, or the Secretary of Agriculture when necessary, to select from the surveyed, unreserved, and unappropriated public lands of the United States within the State of Idaho other lands equivalent in area and value in legal subdivisions and as contiguous as may be to the section in lieu of which the same is taken.

"SEC. 3. That when the State board of land commissioners shall ascertain that sections sixteen and thirty-six, or any part or parts thereof, granted to the State are or have been lawfully included and embraced within any forest or other reservation established under or by authority of any act of Congress, then the said board shall, by and with the approval of the Secretary of the Interior, or the Secretary of Agriculture when necessary, select from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State of Idaho other lands equivalent thereto in area and value in legal subdivisions and as contiguous as may be to the section in lieu of which the same is taken: *Provided*, That if the board shall, upon examination or otherwise, determine that any lands owned by the State in such forest or other reservation borders on or in the vicinity of any lake, waterfall, spring, or other naturally advantageous site, or any natural cusiosity, or that for any other cause said lands are or in the future may have particular value to the State, then the board shall not certify such lands to the Secretary of the Interior as a basis for indemnity selections in lieu thereof, but the State of Idaho shall retain its title in said lands.

"SEC. 4. That when the State board of land commissioners ascertain that what would be, if surveyed, sections sixteen and thirty-six, or any part or parts thereof, granted to the State, falls upon any lake or navigable river and that the quantity of land intended to be conveyed as sections sixteen and thirty-six is lost to the State thereby, it shall be the duty of said board to apply to the Secretary of the Interior for permission to select indemnity lands in lieu of the loss in quantity so sustained by the State.

"SEC. 5. That all relinquishments of State lands heretofore made by the State board of land commissioners as a basis for the selection of indemnity lands in lieu thereof, and all selections of indemnity lands in lieu of lands so relinquished by the State, heretofore made by the State board of land commissioners, be, and the same are hereby, adopted, ratified, approved, and confirmed as of the date of such relinquishment and selection; and the State of Idaho hereby expressly relinquishes its title to all lands so relinquished by the said board: *Provided*, The selection of the indemnity lands in lieu thereof be approved by the Secretary of the Interior, and said lands so selected are certified for patent to the State of Idaho.

"SEC. 6. That the State board of land commissioners be, and the same is hereby, authorized and empowered by and with the approval of the Secretary of the Interior to relinquish the selections by the State of Idaho of those lands in township forty-four north, range two east, and township forty-four north, range 3 east, of Boise meridian, in Idaho, where the claim of the State thereto conflicts with the claims of certain settlers thereto, and such settlers have a prior equitable right thereto as found

by a commission appointed under House joint resolution Numbered Ten, passed by the Senate March second, nineteen hundred and nine: *Provided*, That the relinquishment of such selections shall not be made until the right of the State to select other indemnity lands in lieu thereof shall be recognized and announced by the Secretary of the Interior: *And provided further*, That the State shall not relinquish its title to any such lands when such relinquishment would inure to the benefit of any scrip holder or claimant.

"SEC. 7. An emergency existing, this act shall take effect and be in force from and after its passage and approval."

Act of March 4, 1911 (Session Laws of 1911, p. 85):

"*Be it enacted by the Legislature of the State of Idaho:*

"SECTION 1. That the State of Idaho hereby accepts the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States as amended by an act of Congress February twenty-eighth, eighteen hundred and ninety-one (Twenty-first Statutes at Large, page seven hundred and ninety-six), and the rights and privileges granted to States and Territories by said act.

"SEC. 2. That all relinquishments of State lands in place heretofore lawfully made by the State board of land commissioners as a basis for the selection of indemnity lands in lieu thereof, and all selections of indemnity lands in lieu of lands so relinquished by the State board of land commissioners, are hereby ratified, approved, adopted, and confirmed by the State of Idaho as of the date of such relinquishments and selections.

"SEC. 3. That an emergency existing therefor, this act shall take effect and be in force from and after its passage and approval."

Senate concurrent resolution No. 5 (Session Laws 1911, p. 793), recites again the grant of school lands to Idaho; the provisions of the act of August 18, 1894; the establishment of certain forest reserves within the State; the consequent loss to the State of the school lands to the extent of a million acres or more; the stated announcement that the Secretary of the Interior is about to promulgate a ruling that the State shall be no longer allowed to use unsurveyed school sections in forest and other reserves as a base for selection of other lands; the consequent loss to the school fund of the State; for which reasons—

"It is therefore resolved that the Representatives of Idaho in Congress are directed to aid the State land board in bringing about an adjustment of the conditions now existing between the Government and the State with respect to said school grant in order that Idaho may enjoy the full benefit of its grant, and that a committee be appointed consisting of the attorney general of the State, a member of the senate, and a member of the house, to confer with the Secretary of the Interior, and thus secure a recognition of the rights of the State."

SENATE JOINT MEMORIAL NO. 5.

The State Legislature of Idaho, at its present session, enacted the following joint memorial:

"*Be it resolved by the Senate of the State of Idaho (the House of Representatives concurring:*

"That the Congress of the United States be memorialized as follows:

"Whereas the State of Idaho has now pending with the Department of the Interior of the Federal Government applications for the clear-listing of approximately five hundred thousand acres of land which the State of Idaho has selected either by way of completing the original grants of land made to it by the Federal Government for various purposes or by way of lieu land selections which the State of Idaho has made in lieu of sections sixteen and thirty-six in each township within the State of Idaho, and which the said State has lost by reason of their inclusion within national forests, or for other reasons; and

"Whereas the State of Idaho was permitted by the Federal Government to make these selections in the belief that it would be speedily enabled to obtain title thereto, and is now spending large sums of money each year for the purpose of protecting from fire the timber growing upon such selected lands, and which timber is now ripe and ready for the market: Now, therefore, be it

"*Resolved*, That the Congress of the United States is hereby memorialized to enact such legislation as may be necessary to enable the President of the United States and the Department of the Interior to complete the clear listing and patenting to the State of Idaho, of the lands selected as aforesaid; and be it further

"*Resolved*, That a certified copy of this memorial be sent to each of the Members of the congressional delegation from this State in Congress, with the request that they employ their best efforts to secure action in the premises."

SPECIAL AGREEMENT.

In pursuance of a resolution adopted by the State land board July 11, 1911, a memorandum of agreement entered into under date of October 4, 1911, between the Secretary of the Department of Agriculture and the governor of the State of Idaho, and a supplemental agreement of December 10, 1912, between the Forester, the Assistant Forester, the governor of Idaho, and the State land commissioner of Idaho, a special plan of adjustment as to school lands within national forests was adopted, and the President of the United States, by proclamation of June 4, 1912 (37 Stat., 1743), and March 3, 1913 (37 Stat., 1777), modified the boundaries of certain national forests in the State of Idaho, to permit of the consummation of said plan, under such agreements, but no certifications have been made under said agreement.

DECISIONS OF THE COURTS.

Balderston *v.* Brady (17 Idaho, 567). This suit was commenced by a taxpayer who asked for a writ of prohibition against the threatened action of the State board of land commissioners to restrain them from relinquishing the right and title of the State of Idaho to certain lands theretofore selected by the board under the land grant made by the Federal Government to the State of Idaho.

The court said:

"Now there can be no question or doubt that the 'direction, control, and disposition of the public lands of the State' is vested in the State board of land commissioners. It is equally clear and certain that this power must be exercised 'under such regulations as may be prescribed by law.' Both of the foregoing sections of the constitution contain the same provision as to this limitation of power. The legislature is prohibited, however, from passing any law that would authorize a sale of school lands for less than $10 per acre or any sale or disposition other than 'at public auction.' * * *

"The constitution of this State was framed by the constitutional convention 11 months prior to the admission of the State into the Union, and it was ratified by the people some 8 months before the admission. Notwithstanding this fact, the people at that early date incorporated into the fundamental law of the State sections 7 and 8 of article 9, heretofore quoted, and thereby forbade the legislature authorizing any sale of land for less than $10 per acre or ever 'granting any privileges to persons who may have settled upon such public lands, subsequent to the survey thereof by the General Government, by which amount to be derived by the sale or other disposition of such lands be diminished, directly or indirectly.'' It was provided that the legislature should enact laws whereby the general grants of lands made by Congress to the State should be 'judiciously located and carefully preserved and held in trust' for the several purposes and objects for which they were granted. The admission bill followed the provisions of the constitution, and by sections 8 and 11 thereof it is provided that none of the lands granted by Congress to the State should ever be sold for less than $10 per acre. It needs only to be called to mind to be at once apparent that the legislature can not authorize the land board or anyone else to do any act with reference to State lands that is forbidden by the constitution. Any gift of school or other State lands or relinquishment of the State's title is in violation of the fundamental laws of the State, and would be void."

Proceeding further the court incidentally discussed the character of the school grant made to the State and points out how widely it differs from the ordinary grant, and concludes, after distinguishing the decision of Heydenfelt *v.* Daney, that it is a grant in praesonti notwithstanding the fact that it includes both surveyed and unsurveyed land.

"This discussion, however, is collateral and incidental only to the main point with which we are here interested. Whether the Government through any of its agencies has the power to reclaim the school sections granted by the admission bill is immaterial so far as the Government is concerned, because Congress by the act of August 18, 1894 (28 Stat. L., 372), and other acts dealing with the public domain, has amply authorized the Interior Department to grant indemnity and lieu lands to the States for any and all lands lost or relinquished by the State. (Op. Atty. Gen. of Sept. 15, 1909; decision Secretary Interior in Heirs of Irwin *v.* Ewing and State of Idaho, filed subsequent to Sept. 15, 1909, and not yet officially reported.) The real question then recurs: Has the State authorized the relinquishment of sections 16 and 36 and has the State land board the authority to relinquish the State's right to such lands? But one answer can be given to this query. The authority for such an act can not be found in either the constitution or statute. It is therefore perfectly safe to say that no such power exists. We have hereinbefore said that the board must act under the law. It must find authority in the constitution and statute for its acts. No such authority as claimed exists, and it is clear that the State land board has no power to relinquish

or surrender the right or title of the State of Idaho to any of its school lands. If the State's title to any of these lands comprising sections 16 and 36 is questioned or denied by the department, then the duty of the State to secure an adjudication of the matter by the Federal Supreme Court is plain and unmistakable."

On motion to modify the former judgment in this case (18 Idaho, 238) the court said, in considering the character of the title under which Idaho held its school lands:

"In view of what we previously said it is perhaps proper to add here that it is clear to us, and has been admitted by the learned counsel on both sides, that in order to reach the conclusion that the State took no title under the admission bill (sec. 5) to sections 16 and 36, as construed by Secretary Hitchcock in South Dakota *v.* Delicate (34 L. D., 717), and South Dakota *v.* Riley (34 L. D., 657), it is necessary to eliminate the word 'unsurveyed' and give to it absolutely no meaning or significance whatever. Whether the State has title or not, and whatever the character of that title may be, still it is apparently within the power of the Government to prevent the State taking possession or acquiring any substantial benefits therefrom by withholding the public survey and thereby depriving the State of the evidence and means of proof of the identity of those sections. * * *

"The question as to when a school section has been 'lost,' so far as the State is concerned, is one to be determined by the Government in every case where the State makes application for lieu lands to reimburse such 'loss.' If the Government, therefore, holds that an unsurveyed school section, included in a forest reserve, or one which has been settled upon prior to survey, is thereby 'lost' to the State, it is then the unmistakable duty of the department to grant the State 'lieu' land for such 'loss' (U. S. Comp. Stats., 1901, p. 1483; Idaho admission bill, sec. 4), and the power of the board to take title to lands in 'lieu' of such loss as a base is beyond doubt."

The opinion of the Attorney General, referred to in the original decision, is reported in 27 Opinions, page 605, followed by a later opinion approving and extending the former, in 28 Opinions, 587, wherein it was held generally, that the right of the State of Idaho to make lieu selections pursuant to proceedings under the act of August 18, 1894, was defeated by the establishment of a forest reservation prior to any selections on behalf of the State.

Rogers *v.* Hawley (19 Idaho, 751). This case arose on a petition for a writ to restrain the State board of land commissioners from relinquishing the State's right to a certain section 36. The court thus states the cause of action:

"It is alleged that section 36, township 24 north, range 20 east, Boise meridian, is unsurveyed, but that when the survey is extended over the same, it will be section 36, according to the Government survey, and will therefore fall within the grant made to the State under the Idaho admission bill, whereby the United States granted to the State of Idaho every section 16 and 36 within the State for common school purposes. It is alleged that the State board of land commissioners threaten and are proceeding to assign and relinquish this section as a base for and in lieu of the selection of a like quantity of surveyed land, and this proceeding questions and disputes the power and authority of the board to make a relinquishment of an unsurveyed school section and take in lieu thereof surveyed lands.

"It is also alleged by the second cause of action that the State board of land commissioners in the year 1905 made a relinquishment and assignment of an unsurveyed school section, and took in lieu thereof section 14, township 4 north, range 41 east, Boise meridian, in Fremont County, and which latter section the land board now proposes to sell in the manner provided by law for the sale of school lands.

"The only question that requires our consideration in this case is the power and authority of the State land board to assign as a base for lieu land selections sections 16 and 36 in a forest reserve, or in any other part of the unsurveyed public domain within the State. In Balderston *v.* Brady (17 Idaho, 567; 107 Pac., 493; 18 Idaho, 238; 108 Pac., 272), this court considered the power of the board to make a relinquishment of lieu land selections in favor of settlers, and held that the board had no such power or authority. That decision was based on the provisions of sections 7 and 8 of article 9 of the constitution, which vests in the State land board the 'direction, control, and disposition of public lands of the State, under such regulations as may be prescribed by law,' subject, however, to the limitations that no school land should be sold for less than $10 per acre, and that the lands received from the land grants should be 'subject to disposal at public auction,' etc. The case at bar raises the question alone of the power and authority of the land board to exchange the right, title, or interest of the State in and to unsurveyed school sections for a like area of surveyed and segregated land."

The court then calls attention to the act of the State legislature of February 8, 1911 (Session Laws, p. 16), prescribing certain powers and duties of the State land board, in relation to the location, relinquishment, selection, and exchange with the National

Government of certain lands granted to the State by the General Government, adopting, ratifying, and approving the action of the State board in relinquishing certain State lands and selecting lands in lieu thereof; also to the act of March 4, 1911 (Session Laws, p. 85), accepting the provisions of sections 2275 and 2276 of the Revised Statutes of the United States, as amended by the act of Congress approved February 28, 1891 (21 Stat., 796), and the rights and privileges granted thereby, and ratifying and approving the actions of the State board of land commissioners under said act of Congress.

The court observes that counsel on both sides have addressed their chief argument to the question of the character of title the State acquires to its school lands under its grant, and remarks:

"As we view the question in the light of the recent acts of the legislature, it is not necessary or important that we consider the character or nature of the title the State has to unsurveyed sections 16 and 36 or any such sections as may have been settled upon prior to the survey thereof. In the first place it is admitted on both sides that the State took some kind of a title or equity under sections 4 and 5 of the admission bill to every section 16 and 36 within the State. Whether it be a title, absolute and indefeasible, or a mere inchoate right or 'floating equity' will make no difference with the conclusion we reach in this case, for the reason that the case does not involve a mere naked relinquishment of the State's right and interest, but it rather involves an exchange of unsurveyed, unidentified school sections for 'lands equivalent in area and value' to the sections in lieu of which the surveyed lands are taken. The board proposes to avail itself of the authority conferred by senate bill 47 (act of Feb. 8) and exchange the State's right in and claim to a certain unsurveyed and unidentified section 16, for a section that has been surveyed and of which the State can get immediate possession. There is no dispute but that the act in question confers the authority the board proposes to exercise, and if it is not in conflict with the State constitution, there can be no legal objection to the action the board proposes to take. If senate bill 47 is not valid it must be because it is in conflict with sections 7 and 8 of article 9 of the constitution."

The court then cites those sections at length, and in connection therewith considers the provisions of the State act of February 8, holding:

"'This statute certainly does not authorize or direct a sale of unsurveyed sections 16 and 36, and is not, therefore, obnoxious to the constitution on the ground that it authorizes a sale of school lands for less than $10 per acre, or that it authorizes a disposal' of State lands in a manner other than 'at public auction.' It does not authorize the unqualified surrender or giving away State lands, for the reason that it requires the board to secure title to 'lands equivalent in area and value in legal subdivisions,' etc., as a condition precedent to a complete surrender of the State's title and interest in and to the unsurveyed sections so released. This statute does not authorize the relinquishment of a school section without the State receiving an equivalent therefor in the same kind of property, namely, lands equal in area and value to those released. After the transaction is complete, the State will have a fee simple title to surveyed lands equivalent in area and value to the unsurveyed lands exchanged therefor. The State will still have the same amount of land that it had in the first place, and it will be surveyed and identified. * * *

"We are of the opinion that senate bill 47 is the result of a constitutional exercise of the legislative power to regulate the procedure of the State land board in its dealing with State lands, and in prescribing the manner and method in which it shall acquire and perfect title to State lands and enter into actual possession and enjoyment of such property for the use and benefit of the State. This is a very different question from what it would be if the relinquishment were without consideration and amounted to an unqualified 'disposal' or alienation of the lands relinquished or released, and in this respect the present case differs essentially and vitally from the case of Balderston *v.* Brady."

The objection that the relinquishment under question was made prior to the passage of either the act of February 8, or March 4, 1911, and therefore without color of authority, was taken up by the court and disposed of by calling attention to the fact that both of these acts of the State legislature ratified previous relinquishments executed by the State board of land commissioners.

United States *v.* Bonners Ferry Lumber Co. (184 Fed. Rep., 187). This case involved the construction of the school grant made by the Idaho enabling act of July 3, 1890 (26 Stat., 215).

Sections 4 and 5 of the act were quoted by the court. Without deciding the question that was raised, whether prior to survey of the land the State acquires a vested interest, the court said, speaking of the right of the State prior to survey:

"Even if it be assumed that the United States has not the legal right to convey the land to third persons, or, by including them in reservations, permanently withheld

them from the State, it must be held at least that until the lands are surveyed it retains the legal title, and that the title of the State is therefore not complete."

Thus finding, it was held that, prior to such survey, the State could not grant any authority to remove timber from school sections, nor prevent the United States from recovering the value of timber so removed.

See also Azcusnaga Bros. *v.* Corta (115 Pac. Rep., 18, Idaho Supreme Court).

DECISIONS OF THE DEPARTMENT.

In Thorpe *v.* The State of Idaho (42 L. D., 15), the decision of the Supreme Court of the State of Idaho in Balderston *v.* Brady (107 Pac. Rep., 493) to the effect that sections 16 and 36 within Indian or other reservations, whether surveyed or unsurveyed, were not available as bases for school indemnity selections, was noted, the suspension thereafter, of such exchanges by the department, the subsequent acts of the State legislature to correct the situation, the decision of the supreme court of the State considering these enactments, in the case of Rogers *v.* Hawley (115 Pac. Rep., 687), declaring that all objection to making these exchanges had now been removed, whereupon the department reaffirmed its former decisions as to the validity of such selections, and directed the adjustment to proceed accordingly.

In The Heirs of Irwin *v.* The State of Idaho (38 L. D., 219), the department held that an application by the State for a survey, under the act of August 18, 1894 (28 Stat., 394), does not create any such preferential right of selection on behalf of the State as will prevent the subsequent inclusion of the lands within a national forest. This decision was adhered to, on motion for review, February 1, 1911 (39 L. D., 482).

THE STATE OF WYOMING.

The grant of school lands to this State was made by the act of admission, July 10, 1890 (26 Stat., 222).

In section 2, fixing the boundaries of the State, and providing for the Yellowstone National Park, it is said:

"The said State shall not be entitled to select indemnity school lands for the sixteenth and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined." (See 27 L. D., 25.)

Section 4:

"That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight, entitled 'An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes,' shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable."

Section 5:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

In section 8, dealing with university lands, it is provided that the minimum price of said lands shall be $10 per acre.

Again in section 11, providing specific grants of land in quantity for the State, a provision is made:

"That none of the lands granted by this act shall be sold for less than $10 per acre."

Section 13:

"That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State."

Section 14:

"That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects."

STATE CONSTITUTION.

Section 13, article 7, of the constitution, provides:

"LAND COMMISSIONERS.—The governor, secretary of state, State treasurer, and superintendent of public instruction shall constitute a board of land commissioners, which, under direction of the legislature, as limited by this constitution, shall have direction, control, leasing, and disposal of the lands of the State granted, or which may be hereafter granted, for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by Congress) in portions at proper intervals of time, and at such minimum prices (not less than the minimum fixed by Congress) as to realize the largest possible proceeds."

Article 18, section 1:

"LAND GRANTS ACCEPTED—PRICE LIMIT.—The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may be hereafter made, by the United States to the State for educational purposes, for public buildings and institutions, and for other objects, and donations of money with the conditions and limitations that may be imposed by the act or acts of Congress making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre."

STATE LEGISLATION.

Compiled Statutes of Wyoming, 1910 (sec. 607):

"ACCEPTANCE OF LANDS.—Under the provisions of article eighteen of the constitution of the State of Wyoming, the State of Wyoming hereby accepted the lands granted to this State by the act of Congress entitled 'An act to provide for the admission of the State of Wyoming into the Union, and for other purposes,' approved July tenth, eighteen hundred and ninety, for the purposes in the said act specified, and the said lands so donated by the United States of America to this State are hereby solemnly set apart to the purposes specified in the said act."

Section 608:

"RELINQUISHING LANDS.—Whenever, in the judgment of a majority of the members of either of the boards hereinbefore created, the interests of the State will be advanced by granting, conveying, or deeding to the Government of the United States of America any lands which have been heretofore granted, selected by, and patented to the State of Wyoming, then, in such case, said boards are hereby authorized and empowered to so grant, convey, and deed to the Government of the United States of America such lands. And the president of said boards and the commissioner of public lands are authorized and empowered to execute and deliver all necessary instruments to complete such grant or conveyance: *Provided, always,* That no such lands shall be so granted, conveyed, and deeded unless the Government of the United States of America shall and will permit and allow this State to select and have patented to it an equal area of other lands in lieu of the lands so reconveyed to the United States of America."

Section 629:

"HOW SOLD.—All State lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the board, except as provided in the last two preceding sections, and shall be sold at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre."

SPECIAL EXCHANGE PROVISIONS.

Under the following acts of Congress the State of Wyoming was authorized to reconvey certain described school lands to the United States, and select other lands in lieu thereof: Act of April 23, 1900 (31 Stat., 139); act of March 31, 1906 (34 Stat., 92); act of March 1, 1907 (34 Stat., 1055); act of April 12, 1910 (36 Stat., 295); act of August 24, 1912 (37 Stat., 438); act of May 25, 1914 (38 Stat., 381).

The authority of the State to consummate these exchanges being questioned, in view of the provisions in the State constitution with respect to the disposition of its school lands, the department held, January 31, 1908 (D–2439), that a reconveyance of these lands to the United States was a mere incident in the final adjustment of the grant to the State, and did not constitute a "sale or disposal" of the lands granted, within the meaning of the State constitution, and hence was not in contravention thereof.

DECISIONS OF THE DEPARTMENT.

By special instructions of June 4, 1898 (27 L. D., 35), the department held that the amendatory act of February 28, 1891, repealed so much of the proviso to section 2 of the granting act as declares that the State shall not be entitled to select school indemnity in lieu of sections 16 and 36 in the Yellowstone National Park.

THE STATE OF UTAH.

The grant for common schools was made by section 6 of the enabling act, July 16, 1894 (26 Stat., 107):

"SEC. 6. That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain."

"SEC. 10. That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only."

"SEC. 13. That all land granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said State of Utah."

Utah was admitted as a State by proclamation of the President January 4, 1896. (29 Stat., 876.)

The act of May 3, 1902 (32 Stat., 188), extends to the State of Utah the provisions of the act of February 28, 1891 (26 Stat., 796):

"That all the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said act, anything in the act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union to the contrary notwithstanding.

"SEC. 2. That wherever the words 'sections sixteen and thirty-six' occur in said act, the same as applicable to the State of Utah shall read 'sections two, sixteen, thirty-two, and thirty-six,' and wherever the words 'sixteenth and thirty-sixth sections' occur the same shall read 'second, sixteenth, thirty-second, and thirty-sixth sections,' and wherever the words 'sections sixteen or thirty-six' occur the same shall read 'sections two, sixteen, thirty-two, or thirty-six,' and wherever the words 'two sections' occur the same shall read 'four sections.'"

STATE CONSTITUTION.

It should be noted that no limitation is placed upon the price to be secured for school lands either in the constitution or in subsequent legislation. This for the

reason that the grant itself contains no such limitation. By article 10 of the constitution, section 5, it is provided:

"The proceeds of the sale of land reserved by an act of Congress, approved February twenty-first, eighteen hundred and fifty-five, for the establishment of the University of Utah, and of all the lands granted by an act of Congress, approved July sixteenth, eighteen hundred and ninety-four, shall constitute permanent funds, to be safely invested and held by the State; and the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said acts of Congress."

Article 20:

"SECTION 1. LAND GRANTS ACCEPTED ON TERMS OF TRUST.—All lands of the State that have been or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant, or devise from any person or corporation, or that may otherwise be acquired, are hereby accepted and declared to be the public lands of the State, and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised, or otherwise acquired."

STATE LEGISLATION.

By title 75 (Compiled Laws of Utah, 1907, p. 827), dealing with the State lands, provision is made (sec. 2321) for the creation of a board of land commissioners, to control State lands (sec. 2325).

By section 2330 all selections are required to be made according to the United States survey in legal subdivisions, and the board is authorized to relinquish the claims of the State in any particular tract of land upon which at the time of selection a bona fide claim had been initiated by an actual settler.

Section 2336 directs the manner of sale, and provides that no lands shall be sold for less than the appraised value.

Section 2336x makes provision for the sale of State lands within the area of Government irrigation works.

COURT DECISIONS.

In United States *v.* Elliot (7 Utah, 389), considering the character of title taken by the State to its school lands under the organic act, the court held that the reservation thus established was absolute, and as soon as the lands were surveyed they ceased to be public domain open to settlement, and said:

"In Ferry *v.* Street (4 Utah, 521; 7 Pac. Rep., 712; 11 Pac. Rep., 571), this court, speaking of school lands, said that, by the decisions of the Supreme Court of the United States 'the various acts of Congress mentioned reserving portions of the public lands of the United States to the Territories or States, vest the title to such lands so reserved in the Territories or States when the lands are surveyed, or when they are bounded or ascertained. Until such time, the obligation is executory, and the title remains in the Federal Government.' In the case of Newhall *v.* Sanger (92 U. S., 761), the Supreme Court of the United States, by Davis, J., said: 'The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws.' This decision was rendered nearly ten years before the law under which the present case is brought was passed, and it can not be presumed that Congress was ignorant of it. It is a rule in the construction of statutes that where the legislative branch of the Government has reproduced language in statutory enactments which has been judicially construed it must be taken as using the words in accordance with the judicial construction previously given them, unless a contrary reason plainly appears from the other language used. (The Abbotsford, 98 U. S., 440.) But in the present instance no language is used in the statute under which this case is brought indicating that the words 'public lands' are used in a different sense from the definition of them given in Newhall *v.* Sanger, but, on the contrary, the meaning given seems to have been in the minds of those who drafted the law."

SPECIAL EXCHANGE LEGISLATION.

The act of March 4, 1915 (38 Stat., 1212), authorized the Secretary of the Interior to issue patent to the State of Utah for certain lands described, comprising in the whole 4,197.31 acres, "being a portion of the lands segregated to the State of Utah by approval of the Secretary of the Interior February 1, 1908, under section 4 of the act

of August 18, 1894 (28 Stat., 372–422), and the act amendatory thereof and supplemental thereto, commonly known as the Carey act, in exchange for unsurveyed State school lands within national forests and certain acreage of township deficiency in surveyed townships in the State of Utah."

Following a description of the lands to be received in exchange by the United States is a proviso:

"That said patent shall not issue until the State of Utah shall have filed an unconditional relinquishment of all the lands covered by Utah Segregation List Numbered Two, as well as a proper release of any interest or claim which the State of Utah may have or assert in or to the lands offered in exchange for those herein proposed to be patented."

When the bill embodying the provisions of this act was before the department for a report, it said:

"In view of the decisions in Hibberd *v.* Slack (84 Fed. Rep., 571), State *v.* Whitney et ux. (120 Pac., 116), and Balderston *v.* Brady et al. (107 Pac., 493, and 108 Pac., 742), and Deseret Water & Irrigation Co. (138 Pac., 891), this department is, for the time being, abstaining from action for the approval and certification of all lists of State school land indemnity selections based, as are those here considered, on the exchange provisions of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276, United States Revised Statutes, the provisions of said act having been made applicable to the State of Utah by the act of May 2, 1902 (32 Stat., 188).

"The object of this is to permit a full and adequate inquiry relative to the state of the law bearing on the validity of such selections, as that law may be established or influenced by the decisions above cited and by the statutory and constitutional provisions in force in the several States by which said selections have been made and upon which these decisions are supposed to rest. It is not by any means certain, however, that anything involved in that inquiry necessarily questions the validity of selections made by Utah. The purpose has been and is rather to ascertain and define what legislation, if any, may be essential or advisable to provide adequate security for the titles secured by the States, by means of these selections, and, also, proper protection for the title of the United States to lands surrendered as bases for these selections."

MINERAL LANDS EXCEPTED FROM THE SCHOOL GRANT.

The pending contention of the State of Utah, as well as that of New Mexico, that coal lands are not excepted from its school grant, constitutes a special feature in the adjustment of the grant to this State. The department has uniformly held, in a long line of decisions, that while the enabling act of the State of Utah did not, in terms contain a reservation from the school grant of mineral lands, yet lands of known mineral character, when the grant took effect did not pass to the State. The State being desirous of a judicial determination of its contention, the department, on April 16, 1915, presented the matter to the Department of Justice, to which the following response was made April 23:

"In reply permit me to suggest that there is no longer any room for argument of the question raised. Mineral lands were not included in the grant to New Mexico either for the support of schools or other purposes, and your department and the courts, including the Supreme Court, have uniformly held that coal is a mineral. Moreover, Congress itself has so decided by enacting special laws for the disposition of coal lands.

"Under these circumstances your department would seem to be entirely justified in continuing to administer the law as it has heretofore done, notwithstanding the attitude of the officials of the States of New Mexico and Utah.

"I do not feel that this department should promise to intervene or interfere in any manner with such suit as might be brought by the State against a patentee, because upon the issue of patent the interest of the United States is at an end, and if the aid of this department could be properly given to support the patent issued in one case, there would seem to be no good reason for refusing to lend that support in any other similar case that might be presented. This, as you know, might lead to the Government's becoming involved in endless litigation.

"If the officials of the State really desire to test the question in the courts and to avoid placing upon its citizens the burden of defending the suit, I believe it can be most readily accomplished by the institution of suit in the District of Columbia to restrain the Secretary of the Interior from issuing a patent under the coal-land laws for lands in a school section found by him to be coal lands. I can readily assure you of the good offices of this department in defense against such a proceeding."

The State of New Mexico.

The grant of school lands to this State is peculiar in this, that it received a grant of sections 16 and 36 while it was yet a Territory by the act of June 21, 1898 (30 Stat., 484).

Section 1:

"That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any act of Congress, other nonmineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory in such manner as is hereinafter provided: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act; but such reservations shall be subject to the indemnity provisions of this act."

"Sec. 7. That this act is intended only as a partial grant of the lands to which said Territory may be entitled upon its admission into the Union as a State, reserving the question as to the total amount of lands to be granted to said Territory until the admission of said Territory as a State shall be determined on by Congress.

"Sec. 8. That all grants of land made in quantity or as indemnity by this act shall be selected by the governor of the Territory of New Mexico, the surveyor general of the Territory of New Mexico, and the solicitor general of said Territory, acting as a commission, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said Territory of New Mexico."

Section 10 of this act provides that sections 16 and 36, "reserved for public schools," may be leased under such laws and regulations as may be prescribed by the legislature of the Territory, under approval by the Secretary of the Interior.

EXTENSION OF GENERAL ADJUSTMENT ACT TO THE TERRITORY.

Act of March 16, 1908 (35 Stat., 44):

"That all the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes,' be, and the same are hereby made applicable to the Territory of New Mexico, and the grant of school lands to said Territory, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said act, anything in the act of Congress approved June twenty-first, eighteen hundred and ninety-eight, making certain grants of land to the Territory of New Mexico, and for other purposes, to the contrary notwithstanding."

THE ENABLING ACT.

By the act of June 20, 1910 (36 Stat., 567), admitting the Territory to statehood, a grant of school lands was made by section 6:

"Sec. 6. That in addition to sections sixteen and thirty-six, heretofore granted to the Territory of New Mexico, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any parts thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: *Provided, however*, That the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for

such townships containing five thousand seven hundred and sixty acres or more, nor one section for such township containing six hundred and forty acres or more: *And provided further*, That the grants of sections two, sixteen, thirty-two, and thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common-school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situate within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of all the national forests within said State, the area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

Section 10 of the act declares that a disposal of the granted lands for purposes other than those designated shall constitute a breach of trust; provides for sales and leases to the highest bidder, and further:

"Lands east of the line between ranges eighteen and nineteen east of the New Mexico principal meridian shall not be sold for less than $5 per acre, and lands west of said line shall not be sold for less than $3 per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than $25 per acre: *Provided*, That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section eleven of this act. * * *

"Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof, or the natural products thereof not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

"It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

"Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this act."

The State was admitted by proclamation, January 6, 1912.

CONSTITUTION AND LAWS OF THE STATE.

The laws of New Mexico are not codified, hence a copy of its constitution is not at hand; nor do the Session Laws of 1912 and 1913 deal with any questions affecting the adjustment of the school grant, except the act of March 13, 1913, (Session Laws, p. 35) which authorizes the commissioner of public lands to employ additional assistance to defend against proceedings brought by the United States, to determine title to school or other State lands.

MINERAL EXCEPTIONS.

[See Utah.]

NOTE.—No tabulated statistics with respect to the grant to this State are called for under this report, for the reason that under the terms of the grant the specified sections within national forests, now existing or proclaimed, are administered as a part of said forests until the forests embracing such sections may be restored to the public domain.

THE STATE OF ARIZONA.

By section 24 of the enabling act of June 20, 1910 (36 Stat., 572), the following grant was made to the State for the benefit of common schools:

"SEC. 24. That in addition to sections sixteen and thirty-six heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this act are

hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any part thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, and acts amendatory thereof or supplementary thereto, are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: *Provided, however*, That the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such townships containing six hundred and forty acres or more: *And provided further*, That the grants of sections two, sixteen, thirty-two, and thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situated within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

"SEC. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

"Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust.

"* * * Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the land to be affected or the major portion thereof shall lie. * * *

"All lands, leaseholds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained. * * *

"No lands shall be sold for less than $3 per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than $25 per acre: *Provided*, That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section twenty-four of this act. * * *

"Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof, or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

"It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

"Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this act."

The State was admitted by proclamation February 14, 1912.

STATE CONSTITUTION.

Article 10 of the State constitution provides for an acceptance of the grant of school lands in accordance with the terms affixed thereto. That no lands shall be sold for less than $3 per acre, and no irrigable lands susceptible of irrigation under any United States reclamation project at less than $25 an acre; and provides for the relinquishment of school lands for the benefit of reclamation projects.

STATE LEGISLATION.

By section 4501, Civil Code of 1913, the legislative acceptance of the school grants is given.

Section 4563, et seq., provides for a State land commission.

"4572. The commission is authorized to relinquish lands settled upon within national forests prior to the admission of the State where essential to the protection of just and equitable rights of the settlers."

Section 4597 declares that no lands shall be sold for a less price than is provided by the constitution of the State and by the enabling act.

NOTE.—No tabulated statistics with respect to the grant to this State are called for under this report, for the reason that under the terms of the grant the specified sections within national forests, now existing or proclaimed, are administered as a part of said forests until the forests embracing such sections may be restored to the public domain.

5. PROPOSED LEGISLATION.

(A) AMENDATORY ACT OF 1891.

At different times during the Sixty-second and Sixty-third Congresses bills were introduced intended to authorize an exchange of title as between States and the United States. Attention is especially directed to S. 5068, entitled "An act to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes." Report No. 945, Calendar No. 328, submitted by the Senate Committee on Public Lands on this bill, contains a very full presentation of the causes leading up to the introduction of this bill, in which the decisions of the department on this subject and of the courts, especially that of Hibberd *v.* Slack (84 Fed. Rep., 571), are cited and discussed. It should be noted with respect to these bills that the department took the position that such legislation was not absolutely necessary, but that its enactment would remove all further question as to the validity of exchanges theretofore made under the act of February 28, 1891. Other bills (H. R. 19344 and H. R. 25738) were also introduced in the Sixty-second Congress, both to the same purpose and substantially along the same line as S. 5068, but all equally failed of enactment at the hands of Congress.

In the Sixty-third Congress, House joint resolution 266 was introduced for the purpose of "authorizing and validating certain exchanges of land between the United States and the several States," which in effect was intended to bring about the same result as contemplated in the bills introduced in the prior Congress.

This office submitted a report on said joint resolution (copy herewith), together with a draft of a proposed substitute, which was intended not only to cover the "exchange" question, but also the amendatory effect of the act of 1891 upon grants made prior thereto. Our report did not meet with the approval of the department, but in consideration thereof, and for the purposes of determining in what form, if any, legislative remedies could be applied to the existing conditions, the present call for a report was made by the department.

DEPARTMENT OF THE INTERIOR,
Washington.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands, House of Representatives.

MY DEAR MR. FERRIS: I am in receipt of a copy of House joint resolution 266, with request for report thereon, with such suggestions and recommendation as I may deem appropriate.

The resolution is for the purpose of "Authorizing and validating certain exchanges of land between the United States and the several States," and is introduced by the following preamble:

"Whereas doubt and uncertainty has arisen concerning the purpose and effect of certain provisions contained in the act of Congress approved February 28, 1891 (26 Stat., 796) authorizing selections by States and Territories of public lands in lieu of lands in sections 16 and 36 within certain reserves: Therefore, etc."

The body of the resolution authorizes the Secretary of the Interior to accept from any State having within its boundaries surveyed or unsurveyed lands included in National reservations, proper and satisfactory transfer of such lands which the State may desire to exchange for other lands within the State, etc.; closing with a proviso that all such exchanges heretofore made and approved by the Secretary of the Interior are ratified and confirmed.

The act of 1891 referred to in the preamble is entitled "An act to amend sections 2275 and 2276 of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes," and makes provision by a very substantial amendment for an entire scheme of adjusting the grants of sections 16 and 36, made to the several States, as follows:

1. For lands covered by settlement before survey.
2. For mineral lands.
3. Lands included within national reservations, or otherwise disposed of.
4. For sections fractional, or wanting, due to fractional townships.

The department from the beginning construed this amendatory act as general in character, establishing a uniform rule with respect to the adjustment of school-land grants, affording each State an equal right of indemnity, and superseding, so far as in conflict, all other laws bearing upon the same subject. See departmental instructions of April 22, 1891 (12 L. D., 400). This interpretation of the scope of the act has remained unmodified so far as the decisions of the department are concerned. The occasion for the issuance of the instructions above cited, which, as will be observed, was very shortly after the passage of the amendatory act, arose from the necessity of determining the effect of this legislation upon the enabling act of February 22, 1889 (25 Stat., 676), by which provision was made for the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, wherein a grant of sections 16 and 36 was made in aid of the public schools, providing indemnity only for lands "sold or otherwise disposed of" at the date of the act, and withdrawing said sections either surveyed or unsurveyed from all disposition.

The act of July 3, 1890 (26 Stat., 215), admitting Idaho to the Union, and providing a school grant, was in the same terms, as well as the later acts of July 10, 1890 (26 Stat., 222), and July 16, 1894 (28 Stat., 107), making grants to the States of Wyoming and Utah, respectively.

But in the case of the State of Washington *v.* Whitney (120 Pac. Rep., p. 116), it was held by the supreme court of that State, January 4, 1912, that the enabling act of February 22, 1889, made a present grant to the State of the specific sections 16 and 36, whether surveyed or unsurveyed, and that the act of 1891 amendatory of sections 2275 and 2276 of the Revised Statutes in no manner operated to repeal or modify the provisions of the grant made to the State in said enabling act.

The department also held, construing said act of 1891 (28 L. D., 57):

"Where a forest reservation includes within its limits a school section surveyed prior to the establishment of the reservation, the State, under the authority of the first proviso to section 2275, Revised Statutes, as amended by the act of February 28, 1891, may be allowed to waive its right to such section and select other lands in lieu thereof."

This decision was a recognition that the amendatory act provided for an "exchange of title" between the State and the United States, as well as indemnity, in case the State had sustained a loss to the sections in place, and was equally applicable to all public-land States. This construction of the law has never been modified by the later departmental decisions, but in the case of Hibberd *v.* Slack (84 Fed. Rep., 571), a contrary view of the several acts was reached, substantially to the effect that the act of 1891 was confined in its operations solely to a provision for "indemnity" in case of loss, and this decision was cited and followed by the Supreme Court of California January 20, 1914, in the case of Deseret Water, Oil & Irrigation Co. *v.* The State of California (138 Pac. Rep., 981).

It is therefore seen that the departmental construction of the act of 1891 has, by the courts, been called in question in the following particulars:

1. That the amendatory provisions of said act constitute a general scheme for the indemnification of the States as against loss occurring in the granted sections and supersedes all provisions for indemnity in grants of school lands made prior thereto.
2. That the act of 1891 was not only an act providing for indemnification as against loss, but also authorized an "exchange" of title between the State and the United States where the granted sections fell within a national reservation.

While it is true that the decisions of the courts wherein these questions have thus far been considered are not of necessity final or conclusive, so far as governing the action of the department is concerned, yet is is deemed inadvisable for the department to further proceed in the adjustment of these school grants in accordance with its former construction of the statutes with the uncertainty that is now attendant upon such action and the possibility of an ultimate reversal of its holding by a final decision in the United States Supreme Court.

In view of this situation, several bills were introduced in the Sixty-second Congress—House bill 19344 and Senate bill 5068—both of which received substantially the approval of the department. Senate Report No. 948 on S. 5068 contains a full recitation of the several decisions of the department and the court, bearing particularly upon the "exchange" feature of the act of 1891 as recognized by the department. The department also has under consideration S. 787, introduced in the present Congress and addressed to the same question.

Referring again to the early holding of the department as to the general scheme for adjustment furnished by the act of 1891 as to all prior grants, it is to be noted that in the subsequent grant to Utah in 1894 the terms of the grant made by the act of 1889 were followed, but Congress later, by the act of May 3, 1902 (32 Stat., 188), extended the benefit of the adjustment act of 1891 to that State, as was also done in the case of New Mexico by act of March 16, 1908 (35 Stat., 44).

This action of Congress may very well be taken as an approval of the departmental application of the general scheme to all prior grants. This can be readily understood when it is remembered how much more generous the provisions in the act of 1891 are in the matter of indemnity than the act of 1889, and the apparent intention of Congress of placing all the States on an equal footing. However this may be, the fact yet remains that the State of Washington, speaking through its supreme court, has held the act of 1891 inapplicable to its school grant and thus rendered its further adjustment in that State a matter of doubtful policy in the absence of further legislation.

In dealing with this question, however, the fact should not be overlooked that prior to the decision of the court noted above, the State of Washington had received title to many selections based on the departmental construction of its grant, and has pending selections of a similar character at the present time, as will appear from the tabulated statistics herewith; but if Congress ratifies and confirms selections of such character heretofore made, and in terms extends the provisions of the act of 1891 to the grant made under the act of 1889, then all question as to the applicability of the later act will cease to exist.

Again, the decisions in Hibberd *v.* Slack and in the Deseret case go substantially on the ground that the act of 1891 does not deal with the "exchange" question, but only with indemnity for lands lost in place. Hence if Congress ratifies such exchanges heretofore made and distinctly authorizes similar action hereafter, all objections founded on the Hibberd-Slack doctrine will disappear, so far as want of authority on the part of the department is concerned.

On the other hand, the character of the title received by the United States from the State, either in the matter of indemnity for loss or in exchange of title, will be also put beyond question by the requirement of assent to the provisions of this curative legislation on the part of the State.

The grant of February 22, 1889, fixed the price at which school lands shall be disposed of at not less than $10 per acre. The State of Washington, in its constitution and later by legislation, made due provision for the observance of this condition in the grant, authorizing, however, an exchange of title between the State and United States if the granted lands were included in a national reservation. The position was at one time taken that under such a constitutional provision the legislature would be prohibited from authorizing an exchange of lands between the State and the United States; but in Rogers *v.* Hawley (19 Idaho, 751) it was held by the supreme court of that State that under a similar constitutional limitation an act of the legislature authorizing an exchange between the State and the United States is not obnoxious to the constitution. A like conclusion was reached by the department in the execution of the act of March 1, 1907 (34 Stat., 1055), authorizing the exchange of certain lands between the State of Wyoming and the United States, it being held that a reconveyance of these lands to the United States is a mere incident to the final adjustment of the grant and did not constitute a sale or disposal of the lands granted within the meaning of the State constitution. It would therefore appear that if Federal legislation of the character contemplated herein is enacted the acceptance thereof by the States will not be prevented by constitutional limitations.

The purposes contemplated by the joint resolution now under consideration meets with the approval of the department; but it is of too general a character to reach all of the difficulties that confront the further adjustment of the school grants, and for that reason a substitute bill is submitted herewith.

In this report reference has been made mainly to conditions developing in the adjustment of the grants in California and in Washington, but the departmental construction of the several grants necessarily operates upon all States having similar grants, and the decisions of the courts take on a significance broader than the territorial limits of the State. To emphasize the importance of the proposed legislation, and the magnitude of the interests involved, I submit the following tabulated statement showing approximately the acreage of selections, approved and pending, made on a basis of an equal acreage of lands in school sections surveyed and unsurveyed within the boundaries of national forests and national parks.

1. Acreage, by States, of approved indemnity school land selections made on basis of surveyed school sections within national forests:

	Acres.
California	68,000
Colorado	475,500
Idaho	000
Montana	7,200
Oregon	106,600
South Dakota	9,000
Utah	16,600
Washington	000
Wyoming	129,000
Total	811,900

2. Acreage, by States, of pending indemnity school land selections made on basis of surveyed school sections within national forests:

	Acres.
California	222,000
Colorado	30,200
Idaho	5,000
Montana	43,100
Oregon	6,300
South Dakota	19,500
Utah	000
Washington	000
Wyoming	57,400
Total	383,500

3. Acreage, by States, of approved indemnity school land selections on basis of unsurveyed school sections within national forests:

	Acres.
California	168,800
Colorado	54,000
Idaho	188,600
Montana	228,400
Oregon	232,000
South Dakota	2,500
Utah	355,000
Washington	104,000
Wyoming	297,000
Total	1,630,300

4. Acreage, by States, of pending indemnity school land selections made on basis of unsurveyed school sections within national forests:

	Acres.
California	42,600
Colorado	2,200
Idaho	493,200
Montana	166,900
Oregon	7,200
South Dakota	8,200
Utah	31,300
Washington	16,500
Wyoming	23,600
Total	791 700

NATIONAL PARKS.

1. Acreage, by States, of approved indemnity school land selections made on basis of surveyed school sections within national parks:

	Acres.
California	31,400
South Dakota	960
Total	32,360

2. Acreage, by States, of approved indemnity school land selections made by States on the basis of unsurveyed school sections in such parks:

	Acres.
California	300
Montana	15,200
Wyoming	77,700
Total	93,200

3. Acreage, by States, of pending indemnity school land selections made on basis of surveyed school sections within such parks:

	Acres.
California	2,600

4. Acreage, by States, of pending indemnity school land selections made on basis of unsurveyed school sections in such parks:

	Acres.
Montana	31,000
Wyoming	1,000
Total	32,000

(Above statement was approximately correct when prepared, early in the spring of 1914. Whatever discrepancies may exist between the figures therein and those prepared recently, after an extended tract book examination, are due mainly to intervening additions to and eliminations from national forests and to new indemnity selections.)

If this measure receives the approval of Congress, all defects in title, now held by the courts to exist, will be cured, and the evident intention of Congress to secure uniformity in the adjustment of school grants will be consummated; I therefore recommend its passage.

Respectfully,

_____.

[House joint resolution 266, Sixty-third Congress, second session.]

REDRAFT.

JOINT RESOLUTION Authorizing and validating certain exchanges of land between the United States and the several States.

Whereas doubt and uncertainty have arisen concerning the purpose and effect of the provisions contained in the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes:" Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the provisions of said act are hereby declared applicable to the grant of school lands made by the acts of February twenty-second, eighteen hundred and eighty-nine (Twenty-fifth Statutes at Large, page six hundred and seventy-six), July third, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and fifteen), and July tenth, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and twenty-two); and all selections heretofore made and approved under said grant and in accordance with said act, if otherwise lawful, are hereby ratified and confirmed.

SEC. 2. That said act of February twenty-eighth, eighteen hundred and ninety-one, is hereby declared full authority for the exchange of title between the State and the United States where the sections designated in the grant, whether surveyed or unsurveyed, are included within a national reservation or park; and all such exchanges heretofore made and approved, if otherwise lawful, are hereby ratified and confirmed.

SEC. 3. That the provisions of this resolution shall be deemed and held applicable only where the State shall have, by legislative enactment, signified its assent to the terms of said act of eighteen hundred and ninety-one as herein declared.

(B) MINERAL LANDS.

No provision is made by any of the grants of school land to the several States for the issuance of a patent as evidence of title. Under a grant in this form the right of the State to the lands granted is fixed by their identification upon survey. If at such time the land is of known mineral character the title does not pass thereto, although the grant does not in terms except mineral lands.

Great uncertainty, therefore, as to the lands actually granted has often arisen, due to the fact that no formal adjudication of their character has been required in the Interior Department. To give better assurance of title under school grants Senate bill 2911 was introduced in the Sixty-third Congress and was made the subject of a report by the department. (Copy follows:)

DEPARTMENT OF THE INTERIOR,
Washington, August 12, 1914.

Hon. HENRY L. MYERS,
Chairman Committee on Public Lands, United States Senate.

MY DEAR SENATOR: In response to the request of your committee for a report on Senate bill 2911, entitled "A bill further to assure title to lands granted the several States, in place, in aid of public schools," I have to submit the following:

The purpose of this bill is to furnish the various States a record title to the lands in place granted in aid of public schools, and the necessity for such legislation arises from the absence of any statutory provision to this effect under the form in which school land grants have heretofore been made by Congress. These grants are uniformly made by a simple designation of certain sections by number, without provision for the issuance of any evidence of title. Under a grant made in this form the right of the State as to the lands granted is fixed by their identification upon survey and is not dependent upon any specific adjudication by the Interior Department.

A statutory grant of this character calls for no further evidence of title, as the statute in such case is both a grant and a conveyance, so far as the lands are of the character granted and otherwise subject thereto; but it has been held by the Supreme Court of the United States that, although the grant to the public schools is in general terms and without an exception of mineral lands, it does not pass title thereto for the reason that "Congress did not intend to depart from its uniform policy in this respect in the grant of these sections to the State," and that mineral lands are therefore excluded from the grant. (Consolidated Mining Co. *v.* Consolidated Mining Co., 102 U. S., 175; Deffeback *v.* Hawk, 115 U. S., 392.)

The known condition of the designated section at the date when the grant takes effect determines whether the land does or does not pass thereunder; and if at that time the land is not known to contain mineral, a subsequent discovery thereof will not affect the title to the State. (Deffeback *v.* Hawk, supra; Colorado Coal Co. *v.* United States, 123 U. S., 328; Shaw *v.* Kellogg, 170 U. S., 312.)

It will therefore be seen that in the absence of some provision by which the known condition of the specified sections, at the date when the grant takes effect, can be ascertained and adjudicated, the title of the State must remain doubtful and subject to attack and this bill is intended to provide a remedy for such uncertainty in title. Under its provisions the Secretary of the Interior, on request of the State, will, by appropriate means, ascertain the known character of the land and the date when the grant became effective, and upon the evidence thus obtained determine whether the land does or does not fall within the terms of the grant, and either issue or withhold patent in accordance with such conclusion. A patent issued after such a determination by the Secretary will operate as a conclusive assurance of the title taken by the State under the grant. (Rogers Locomotive Works *v.* American Emigrant Co., 164 U. S., 559.)

The bill as it now stands provides for publication in all cases, preceding final action on the part of the department. In my judgment, such a requirement will, in very many instances, result in useless expense to the State. In States like Alabama and Minnesota, for example, to which the mineral land laws do not apply, as well as in

those sections of the public land States where the land is known to be purely agricultural in character, publication will not be needed for the protection of mineral locators. As to claims other than those under the mining laws, this department is without jurisdiction to entertain any except such as may be based upon settlement prior to survey in the field.

With respect to school lands surveyed many years ago, and as to which no settlement has ever been asserted, it may safely be assumed that no such claim exists. It is, therefore, believed to be better to omit the arbitrary requirement of publication in all cases and empower the Secretary of the Interior to make such rules and regulations as will insure protection of bona fide claims to lands in the school sections with the minimum of expense. In view of the wide variance of conditions in the several States, I am strongly of the opinion that the satis factory and orderly working of the proposed law will largely depend upon the grant to this department of authority to administer it in the light of conditions known to exist in the different States and localities.

The bill as it now stands provides for evidence of title by certification in the event that the State is found entitled to the lands, but it is believed that the ordinary form of conveyance adopted by the Government is preferable, and for that reason, as well as the one hereinbefore cited, the bill has been redrafted. An additional section has been added, authorizing the Secretary of the Interior hereafter to issue patent under State grants, where selections authorized thereby have received departmental approval. This is in line with the general views expressed herein and will furnish the State a much more convenient evidence of title than the certification under the present practice.

With the modification indicated in the redraft submitted herewith, I recommend the enactment of the bill into law.

Respectfully,

A. A. JONES,
First Assistant Secretary.

[S. 2911, Sixty-third Congress, first session.]

REDRAFT.

A BILL Further to assure title to lands granted the several States, in place, in aid of public schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where a grant of lands in place has heretofore been made, or may hereafter be made, to any State in aid of public schools, the governor of any such State may cause to be listed with the Secretary of the Interior any sections or parts of sections as designated in the grant, and it shall be the duty of the Secretary of the Interior to issue a patent to the State in further assurance of title, of all tracts thus listed, and found to be of the character granted, and free from valid, adverse claims at the time when the rights of the State attach: *Provided*, That nothing herein contained shall be so construed as to postpone the time of the attachment of the grant of such lands under existing law.

SEC. 2. Hereafter, on approval by the Secretary of the Interior of selections made by any State under grants made by Congress, he shall direct the issuance of patent for the lands so selected and approved.

SEC. 3. The Secretary of the Interior is hereby authorized and empowered to make such rules and regulations as may be necessary to carry into effect the provisions of this act and to afford to any adverse claimant of lands listed by the State an opportunity to be heard in defense of his claim.

6. TABULATED STATEMENT.

NOTE.—It has been found impracticable in a report of this character, to furnish actual dates when forest reservations or withdrawals were made, because of the numerous changes which have been made in the names and boundaries thereof.

Forest reserves were authorized by the act of March 3, 1891, and the date of withdrawal or reservation of any particular tract of land is readily ascertainable.

Reference is made to the report of the Commissioner of Indian Affairs for the year 1908, pages 149 to 164, for a schedule showing each Indian reservation, under what agency or school, tribes occupying or belonging to it, area not allotted or specially reserved, and authority for its establishment.

The State of California.

[Enabling act of Mar. 3, 1853 (10 Stat., 244).]

Area of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Angeles	44,725.14	480.00	34,536.11	10,669.03
Crater	3,017.84	.....	1,843.23	1,174.61
Cleveland	31,099.65	2,240.00	16,599.24	16,740.41
Eldorado	39,977.43	1,920.00	15,967.07	25,930.36
Inyo	32,683.36	33,320.00	43,040.30	22,963.06
Kern	21,407.19	14,520.00	30,278.08	5,649.11
Klamath	90,471.23	1,280.00	67,437.62	24,313.61
Lassen	60,849.18	3,200.00	26,558.14	37,491.04
Modoc	74,193.62	3,360.00	20,549.82	57,003.80
Mono	30,865.23	7,520.00	21,910.12	16,475.11
Monterey	23,660.77	1,120.00	10,916.86	13,863.91
Plumas	64,416.14	8,320.00	32,716.72	40,019.42
Santa Barbara	77,145.55	5,920.00	41,459.83	41,605.72
Sequoia	30,491.58	9,280.00	21,421.57	18,350.01
Shasta	73,815.84	4,960.00	35,073.43	43,702.41
Sierra	41,409.83	19,840.00	38,841.01	22,408.82
Siskiyou	20,045.27	1,587.84	9,220.03	12,413.08
Stanislaus	39,523.87	15,720.00	25,945.30	29,298.49
Tahoe	57,715.79	1,600.00	37,055.23	22,260.56
Trinity	89,187.55	3,040.00	40,934.03	51,293.52
Totals	946,702.06	139,227.84	572,303.82	513,626.08

Data were secured in 1912 showing sales by the State of school lands in place. The acreage of such sales within the boundaries of national forests and national parks is as follows:

	Acres.
In national forests	424,000.45
In national parks	466.98
Total	424,467.43

Areas of school sections in national parks and Indian reservations.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
National parks:	*Acres.*	*Acres.*	*Acres.*	*Acres.*
California	54,051.41	1,600.00	12,560.54	43,090.87
Sequoia	8,960.00	.....	7,636.12	1,323.88
Yosemite	31,184.20	7,680.00	32,370.67	6,493.53
Indian reservations:				
Colorado	1,895.06	.....	969.26	925.80
Hupa Valley	4,904.01	.....	4,693.70	210.31
Mission	3,680.00	.....	1,920.00	1,760.00
Tule River	1,920.00	.....	1,920.00	.....
Yuma	1,708.26	.....	1,588.26	120.00
Round Valley	2,407.46	.....	1,280.00	1,127.46

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or other minerals.

Reclamation, first form	69,281.84
Reclamation, second form	15,792.80
Coal	2,440.00
Potash	5,200.00
Power	5,521.83
Petroleum	60,997.79
Naval reserve	3,252.39
Bird reserves	1,600.00

Acreage of pending school land indemnity selections within the boundaries of various withdrawn areas, or classified as valuable for minerals.

National forests	71,666.35
Power-site reserves	7,030.84
Petroleum	12,563.56
Coal	1,920.64
Reclamation, first form	2,146.05
Water reserves	2,049.69
Bird reserves	80.00

The State of Oregon.

[Enabling act of Feb. 14, 1859 (11 Stat., 383).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Cascade	18,112.00	50,240.00	55,390.72	12,961.28
Crater	20,160.00	10,560.00	14,071.80	16,648.20
Deschutes	37,136.04	8,640.00	14,404.72	31,371.32
Fremont	16,000.00	5,120.00	9,720.00	11,400.00
Malheur	53.720.00	3,840.00	9,520.00	48,040.00
Minam	18,880.00	5,120.00	19,080.00	4,920.00
Ochoco	31,360.00	2,560.00	4,720.00	29,200.00
Oregon	32,156.70	31,680.00	41,720.00	22,116.70
Paulina	31,920.00	12,800.00	16,300.00	28,420.00
Santiam	19,200.00	14,080.00	21,684.21	11,595.79
Siskiyou	14,012.28	44,720.00	43,571.59	15,160.69
Siuslaw	30,547.74	640.00	9,800.00	21,387.74
Umatilla	16,640.00	.....	1,360.00	15,280.00
Umpqua	17,280.00	37,120.00	37,520.00	16,880.00
Wallowa	30,195.60	26,560.00	36,331.54	20,424.06
Wenaha	15,772.95	7,255.88	15,661.56	7,367.27
Whitman	30,320.00	5,760.00	26,474.00	9,606.00
Total	433,413.31	266,695.88	377,330.14	322,779.05

Areas of school sections in national parks and Indian reservations.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
National parks:	*Acres.*	*Acres.*	*Acres.*	*Acres.*
Oregon Caves	.....	640.00	640.00	.....
Crater Lake Park	.....	7,680.00	7,680.00	.....
Indian reservations:				
Klamath	73,073.74	.....	73,073.74	.....
Warm Springs	13,520.00	12,800.00	24,400.00	1,920.00
Umatilla	17,746.79	.....	17,746.79	.....

Acreage of school sections or parts thereof within other withdrawals or reserves.

Reclamation, first form	46,679.83
Reclamation, second form	640.00
Power	40.00
Bird reserves	698.82

No school-land indemnity selections are found to be pending within areas withdrawn from entry or classified as valuable for coal or other minerals.

The State of Colorado.

[Enabling act of Mar. 3, 1875 (18 Stat., 474).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Pike	72,000.00	.....	59,840.00	12,160.00
Leadville	64,480.00	.....	63,920.00	560.00
Rio Grande	60,400.00	1,920.00	55,440.00	6,880.00
San Juan	54,580.00	4,480.00	54,920.00	4,120.00
Routt	51,360.00	.....	45,680.00	5,680.00
Cachetopa	44,800.00	.....	43,160.00	1,640.00
Montezuma	37,760.00	.....	25,040.00	11,720.00
Arapahoe	36,160.00	.....	30,880.00	5,280.00
San Isabell	33,600.00	1,920.00	31,240.00	4,280.00
Colorado	32,000.00	.....	25,640.00	6,360.00
Durango	28,880.00	.....	20,920.00	7,880.00
Holy Cross	26,560.00	.....	24,840.00	1,720.00
Gunnison	23,040.00	.....	22,800.00	240.00
Sopris	23,040.00	.....	22,480.00	560.00
Uncompahgre	9,600.00	1,280.00	8,600.00	2,280.00
Hayden	5,280.00	.....	5,280.00	.....
White River	4,160.00	.....	4,160.00	.....
Total	607,600.00	9,600.00	545,840.00	71,360.00

Above statement embraces no portion of the ceded Ute Indian lands, which were opened to disposition under the acts of June 15, 1880, and February 20, 1895.

Acreage of school sections or parts thereof within national parks, and Indian reservations, also within ceded Ute Indian lands.

Rocky Mountain National Park (created by the act of Jan. 26, 1915):

Surveyed	14,320
Used as base	13,920
Not offered as base	400
Total	14,320

Mesa Verde National Park (created by the act of June 29, 1906):

Surveyed (all used as base)	2,080

Southern Ute Indian Reservation:

Surveyed	21,120
Used as base	13,680
Not offered as base	7,440
Total	21,120

Ute Indian Reservation lands opened to disposition under the acts of June 15, 1880 (21 Stat., 199), and Feb. 20, 1895 (28 Stat., 677).

Surveyed	615,360
Unsurveyed	51,840
Total	667,200
Used as base	643,680
Not offered as base	23,520
Total	667,200

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal.

Reclamation (first form)	3,320
Coal	254,960
Power	800

No pending selections have been found embracing lands reserved, withdrawn, or classified as valuable for minerals.

The State of Washington.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Columbia	17,339.73	35,520.00	5,120.00	47,739.73
Rainier	19,187.69	72,343.88	31,496.86	60,034.71
Washington	9,958.19	82,657.50	24,026.56	68,589.13
Snoqualmie	16,063.98	47,480.00	3,200.51	60,343.47
Wenatchee	37,992.54	45,822.00	13,033.40	70,781.14
Chelan	9,726.80	105,760.00	10,507.07	104,979.73
Colville	4,885.81	22,720.00	.....	44,605.81
Kaniksu	10,665.36	10,240.00	1,240.00	19,665.36
Wenaha	3,157.72	12,160.00	.....	15,317.72
Olympic	12,734.25	39,800.00	4,152.80	48,381.55
Total	158,712.07	474,503.78	92,777.20	540,438.25

Acreage of school sections or parts thereof within national parks and military reserves.

Mount Rainier National Park (created by act of Mar. 2, 1899):

Surveyed	5,120.00
Unsurveyed	5,760.00
Total	10,880.00
Used as base	8,839.66
Not offered as base	2,040.34
Total	10,880.00

Mount Olympus National Park (created by proclamation of Mar. 2, 1909):

Surveyed	1,208.17
Unsurveyed	32,320.00
Total	33,528.17
Used as base	15,811.27
Not offered as base	17,716.90
Total	33,528.17

Colville Indian Reservation:

Surveyed	75,981.66
Used as base	30,364.55
Not offered as base	45,617.11
Total	75,981.66

Yakima Indian Reservation:

Surveyed	67,659.88
Used as base	21,418.51
Not used as base	46,241.37
Total	67,659.88

Spokane Indian Reservation:

Surveyed (none used as base)	6,512.51

Queniult Indian Reservation:

Surveyed (none used as base)	9,842.09

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal.

Reclamation, first form	67,083.75
Reclamation, second form	4,547.19
Military reserves	73.50
Bird reserves	280.00
Coal	28,632.17
Power	3,981.30

It is also found that there are 3,772.90 acres of pending school-land indemnity selections within areas withdrawn or classified as coal lands, 160 acres of such selections within national forests, and 160 acres of selections within power-site reserves. No pending selections have been found embracing lands otherwise withdrawn.

The State of Montana.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Beaverhead	5,120.00	70,940.00	63,002.97	13,067.03
Bitter Root	16,800.51	44,040.00	46,060.84	14,789.67
Blackfeet	17,370.75	39,680.00	3,756.06	53,294.69
Absaroka	13,433.28	38,400.00	43,578.54	8,254.74
Beartooth	4,040.48	38,071.52	39,832.42	2,279.58
Cabinet	26,495.33	36,017.82	440.00	62,073.15
Custer	19,894.60	5,120.00	18,536.01	6,479.59
Deer Lodge	19,723.62	33,280.00	43,613.04	9,390.58
Flathead	16,968.85	100,494.08	34,183.62	83,279.31
Gallatin	18,743.83	26,080.00	37,774.81	7,049.02
Helena	22,153.31	30,720.00	47,475.31	5,398.00
Jefferson	29,509.93	37,280.00	53,993.77	12,796.16
Kootenai	29,489.83	60,800.00	780.83	89,509.00
Lolo	33,383.62	36,120.00	11,565.30	57,938.32
Madison	9,093.28	51,200.00	42,964.42	17,328.86
Missoula	28,423.87	45,760.00	30,699.29	43,484.58
Sioux	1,840.00	2,560.00	3,661.82	738.18
Lewis and Clark		49,600.00	47,642.59	1,957.41
Total	312,485.09	746,163.42	569,546.64	489,107.87

Acreage of school sections or parts thereof within national parks, Indian reservations, and military reserves.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed	7,866.00
Used as base	4,967.00
Not offered as base	2,899.00
Total	7,866.00
Glacier National Park (created by act of May 11, 1910):	
Surveyed	3,472.48
Unsurveyed	51,628.47
Total	55,100.95
Used as base	46,375.93
Not offered as base	8,725.02
Total	55,100.95

Blackfeet Indian Reservation:	
Surveyed	83,999.05
Used as base	79,382.08
Not offered as base	4,616.97
Total	83,999.05
Crow Indian Reservation:	
Surveyed	105,407.95
Unsurveyed	24,960.00
Total	130,367.95
Used as base	84,080.98
Not offered as base	46,286.97
Total	130,367.95
Fort Belknap Indian Reservation:	
Surveyed	1,722.61
Unsurveyed	24,426.65
Total	26,149.26
Not offered as base	26,149.26
Fort Peck Indian Reservation (opened to entry by proclamation of July 25, 1913, 42 L. D., 264, pursuant to the act of May 30, 1908, 35 Stat., 558):	
Surveyed and now available as base	1,886.01
Used as base for pending selections	1,862.08
Not offered as base	23.93
Total	1,886.01
Fort Keogh Military Reserve (created by Executive orders of Mar. 14, 1878, and Jan. 22, 1909):	
Surveyed (none used or offered as base)	4,327.17

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or other minerals.

Reclamation, first form	27,486.92
Reclamation, second form	39,021.82
Coal	1,097,357.48
Phosphate	7,880.00
Power	5,636.31
Water	200.00

It is also found that there are 94,197.29 acres of pending school land indemnity selections within areas withdrawn or classified as coal lands. No pending selections have been found embracing lands otherwise withdrawn.

The State of South Dakota.

[Enabling act of Feb. 22, 1889 (25 Stat., 767).]

Acreage of school sections or parts thereof within national forests, national parks, and Indian reservations.

Black Hills National Forest:	
Surveyed	33,744.77
Unsurveyed	26,640.21
Total	60,384.98
Used as base	36,904.98
Not offered as base	23,480.00
Total	60,000.98

Sioux National Forest:	
Surveyed	4,120.00
Used as base	3,320.00
Not offered as base	800.00
Total	4,120.00
Wind Cave National Park:	
Surveyed (all used as base)	960.00
Crow Creek Indian Reservation:	
Surveyed (all used as base)	17,635.25
Lower Brule Indian Reservation:	
Surveyed (all used as base)	11,480.00
Rosebud Indian Reservation:	
Surveyed	48,280.72
Used as base	24,103.75
Not offered as base	24,176.97
Total	48,280.72
Pine Ridge Indian Reservation:	
Surveyed	137,323.86
Used as base	134,716.08
Not offered as base	2,607.78
Total	137,323.86
Cheyenne River Indian Reservation:	
Surveyed	62,798.99
Used as base	34,057.36
Not offered as base	28,741.63
Total	62,798.99
Standing Rock Indian Reservation:	
Surveyed	40,080.35
Used as base	12,018.53
Not offered as base	28,061.82
Total	40,080.35

Acreage of school sections or parts thereof within other withdrawals or reserves or classified as valuable for coal.

Reclamation, first form	9,600
Coal	14,780
Bird reserves	640

It is also found that there are 29,607.86 acres of pending school land indemnity selections within national forests and 11,239.08 acres of selections within areas withdrawn or classified as coal lands. No pending selections have been found embracing lands otherwise withdrawn.

The selections reported as pending within national forests were made in lieu of school sections within national forests, under authority of the President's proclamation of February 15, 1912 (37 Stat., 1729).

The State of North Dakota.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Acreage of school sections or parts thereof within national forests and Indian reservations.

Turtle Mountain Indian Reservation:
Surveyed (all used as base) 2,560.00
Standing Rock Indian Reservation (opened to entry under act of Feb. 14, 1913; 37 Stat., 675, on May 19, 1915):
Surveyed (none used or offered as base) 31,075.33
Dakota National Forest:
Surveyed (none used as base) 640.00
Fort Berthold Indian Reservation (diminished):
Surveyed (none used or offered as base) 23,709.22

The school lands formerly in said Fort Berthold Indian Reservation, and within the portion opened to entry on May 4, 1912, under act of June 1, 1910 (36 Stat., 455), are as follows:

Surveyed	31,419.94
Offered as base	19,180.92
Not offered as base	12,239.02
Total	31,419.94

Nine thousand nine hundred and sixty acres of these school sections, or parts thereof, have been allotted to Indians, and 14,318.72 acres are found to have been classified as coal lands at fixed prices.

Acreage of school sections or parts thereof within other withdrawals or reserves or classified as valuable for coal.

Coal 978,629.82

There are found to be 280 acres of pending school-land indemnity selections within areas withdrawn or classified as coal land, but no pending selections have been found embracing lands otherwise withdrawn.

The State of Idaho.

[Enabling act of July 3, 1890 (26 Stat., 215).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Boise	28,848.97	31,360.00	49,495.83	10,713.14
Cache		13,760.00	12,134.83	1,625.17
Caribou	3,840.00	28,800.00	20,024.36	12,615.64
Challis	4,480.00	67,840.00	66,810.03	5,509.97
Clearwater	8,960.00	35,840.00	22,446.53	22,353.47
Coeur d'Alene	33,392.77	7,040.00	24,052.28	16,380.49
Idaho	10,880.00	56,000.00	54,489.80	12,390.20
Kaniksu	25,391.23	1,920.00	9,760.00	17,551.23
Lemhi	640.00	63,760.00	58,795.71	5,604.29
Minidoka	8,960.00	19,600.00	11,335.20	17,224.80
Nez Perce	15,035.92	78,880.00	87,714.93	6,200.99
Palisade	7,668.80	7,680.00	14,537.71	811.09
Payette	23,923.03	21,494.80	28,649.29	16,768.54
Pend Oreille	33,799.01	14,080.00	28,301.93	19,577.08
Pocatello	11,192.50	3,200.00	4,240.00	10,152.50
St. Joe	28,171.53	25,840.00	23,726.31	30,285.22
Salmon	4,870.23	92,920.00	50,601.48	47,188.75
Sawtooth	7,680.00	59,840.00	51,176.81	16,343.19
Selway		99,200.00	88,950.13	10,249.87
Targhee	17,767.88	23,260.00	22,985.59	18,042.29
Weiser	23,680.00	7,680.00	5,760.00	25,600.00
Total	299,181.87	759,994.80	735,988.75	323,187.92

Acreage of school sections, or parts thereof, within national parks and Indian reservations.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed (all used as base)	1,600.00
Fort Hall Indian Reservation:	
Surveyed	32,083.22
Used as base	935.05
Not offered as base	31,148.17
Total	32,083.22
Duck Valley Indian Reservation:	
Surveyed	1,280.00
Unsurveyed	2,560.00
Total	3,840.00
Used as base	3,200.00
Not offered as base	640.00
Total	3,840.00

Acreage of school sections, or parts thereof, within other withdrawals or reserves, or classified as valuable for coal.

Reclamation, first form	28,995.17
Reclamation, second form	18,680.00
Coal	18,760.00
Phosphate	51,207.92
Power	2,330.26
Water	640.00
Bird reserves	2,382.97

Acreage of pending school land indemnity selections within the boundaries of various withdrawn areas, or classified as valuable for coal or phosphate.

National forests	231,012.45
Power-site reserves	1,034.08
Phosphate	128,554.79
Coal	7,223.84

Practically all the selections reported as within national forests were made in lieu of unsurveyed school sections within national forests, under authority of the President's proclamations of June 4, 1912 (37 Stat., 1743), and March 3, 1913 (37 Stat., 1777).

The State of Wyoming.

[Enabling act of July 10, 1890 (26 Stat., 222).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Big Horn	48,000	14,400	59,680	2,720
Medicine Bow	27,040	.....	24,520	2,520
Shoshone	15,465	89,600	100,800	4,265
Teton	23,360	64,000	85,800	1,560
Wyoming	22,720	32,000	50,920	3,800
Bridger	8,960	13,440	22,200	200
Bonneville	18,820	35,200	53,240	780
Washakie	14,720	.....	13,280	1,440
Hayden	21,440	.....	11,480	9,960
Sundance	10,330	.....	7,180	3,150
Palisade	.....	11,520	11,200	320
Targhee	.....	2,560	2,160	400
Caribou	360	.....	360	.....
Black Hills	640	.....	600	40
Total	211,850	262,720	443,420	31,150

Acreage of school sections or parts thereof within national parks, Indian reservations, and military reserves.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed	104,640
Used as base	103,680
Not offered as base	960
Total	104,640
Shoshone Indian Reservation:	
Surveyed	28,160
Unsurveyed	16,640
Total	44,800
Used as base	44,480
Not offered as base	320
Total	44,800
Fort D. A. Russell Target and Maneuver Reserve (created by Executive orders of Oct. 9, 1903, and Apr. 19, 1910):	
Surveyed (all used as base)	2,560

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or phosphate.

Petroleum	11,320
Reclamation, first form	17,840
Reclamation, second form	15,600
Coal	656,280
Phosphate	11,320
Power	80

It is also found that there are 11,120 acres of pending school land indemnity selections within areas withdrawn or classified as coal lands, 480 acres of such selections within areas withdrawn or classified as phosphate lands, and 5,080 acres of selections within water reserves. No pending selections have been found embracing lands otherwise withdrawn.

The State of Utah.

[Enabling act of July 16, 1894 (28 Stat., 107).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Powell	5,761.92	76,060.00	69,364.02	12,477.90
LaSalle	7,151.61	49,120.00	32,040.00	24,231.61
Nebo	9,383.16	8,520.00	7,640.00	10,263.16
Fishlake	46,709.23	26,720.00	20,147.55	53,281.75
Manti	28,840.79	53,280.00	50,865.70	31,255.09
Wasatch	4,464.47	24,300.00	20,880.00	7,884.47
Fillmore	56,772.95	21,440.00	15,440.00	62,772.95
Sevier	40,622.38	44,194.00	48,857.28	35,959.10
Dixie	17,780.95	30,180.00	22,639.68	25,321.27
Cache	22,247.08	11,800.00	13,440.00	20,607.08
Minidoka	8,336.42	1,280.00	1,040.00	8,576.42
Pocatello	2,077.13		80.00	1,997.13
Uintah (former Uintah Indian Reservation)	73,982.56		62,249.05	11,733.50
Uintah (outside former Uintah Indian Reservation)	36,692.68	45,266.12	50,494.05	31,464.76
Ashley (former Uintah Indian Reservation)	34,691.41		33,036.24	1,655.07
Ashley (outside former Uintah Indian Reservation)	9,982.00	57,941.36	51,438.61	16,484.75
Total	405,496.64	450,101.48	499,652.18	355,966.01

Acreage of school sections or parts thereof (in addition to such lands now within national forests) which were embraced in the former Uintah Indian Reservation.

[Opened to entry by acts of May 27, 1902, 32 Stat., 245; and Mar. 3, 1905, 33 Stat., 1048-1069.]

Surveyed	164,735.59
Used as base	150,819.91
Not offered as base	13,915.68
Total	164,735.59

Reference is hereby made to the Secretary's decision of June 13, 1905 (33 L. D., 610), which held as follows:

"In regard to the grant in place, which grant was made by the act of July 16, 1894 (28 Stat., 107), of sections 2, 16, 32, and 36, in each township in said State, it is the opinion of the department that not only technical rules of statutory construction, but also the general scope of legislation bearing upon the disposal to be made of the unallotted portion of this reservation, and the policy of the United States in respect to public schools and also to Indians, call for the denial of any claim on the part of the State to any portion of its school grant in place within the limits of this reservation. Further, that the reasons controlling the decision just arrived at prevent the recognition of any claimed right on the part of the State to select indemnity from the surplus lands of this reservation in further satisfaction of the school grant, prior to the opening thereof, under the provisions of the act of March 2, 1895 (28 Stat., 876, 899), or at all. (See Minnesota *v.* Hitchcock, 185 U. S., 373.)

The State acquiesced in this holding, and has tendered selections in lieu of the greater portion of the lands in designated school sections within the boundaries of said former reservation.

Acreage of school sections or parts thereof within national parks, bird reserves, and Indian reservations.

Mukumtweap National Park:	
Unsurveyed (none used as base)	640.00
Strawberry Valley Bird Reserve:	
Unsurveyed (none used as base)	840.00
Navajo Indian Reservation:	
Surveyed	9,132.41
Unsurveyed	61,898.94
Total	71,031.35
Not offered as base	71,031.35
Kaibab and Piute Indian Reservation:	
Unsurveyed (none used as base)	60,640.00
Shebit Indian Reservation:	
Unsurveyed (none used as base)	2,560.00
Utah Indian Reservation:	
Surveyed	1,920.00
Unsurveyed	1,280.00
Total	3,200.00
Not offered as base	3,200.00

Acreage of schools sections or parts thereof within other withdrawals or reserves or classified as valuable for coal or phosphate.

Reclamation, first form	123,827.72
Reclamation, second form	2,810.00
Coal	753,842.82
Phosphate	3,584.03
Power	6,600.00
Petroleum	202,511.90

Acreage of pending school-land indemnity selections within the boundaries of various withdrawn areas or those classified as valuable for coal or other minerals.

Coal	16,527.64
Phosphate	280.00
Power sites	738.21
Water reserves	674.60
Petroleum	678.22
Military reserves	681.22
Reclamation (first form)	1,096.57
National forests	643.73

School sections within national forests.

	Surveyed.	Unsurveyed.	Used as base.	Not offered.
	Acres.	*Acres.*	*Acres.*	*Acres.*
California	946,702.06	139,227.84	572,303.82	513,626.08
Oregon	433,413.31	266,695.88	377,330.14	322,779.05
Colorado	607,600.00	9,600.00	545,840.00	71,360.00
Washington	158,712.07	474,503.78	92,777.20	540,438.25
Montana	312,485.09	746,163.42	569,546.64	469,107.87
South Dakota	37,864.77	26,640.21	40,224.98	24,280.00
North Dakota	640.00			640.00
Idaho	299,181.87	759,994.80	735,988.75	323,187.92
Wyoming	211,850.00	272,720.00	443,420.00	31,150.00
Utah	405,496.64	450,101.48	499,652.18	355,966.01
Total	3,413,945.81	3,135,647.41	3,877,083.71	2,672,535.18

SUMMARY.

	Acres.
Surveyed	3,413,945.81
Unsurveyed	3,135,647.41
Total	6,549,593.22

Tabulation of the statement prepared in the spring of 1914, showing selections made in lieu of school sections within national forests; also showing new selections filed since such original statement was compiled.

	Approved surveyed base.	Approved unsurveyed base.	Pending surveyed base.	Pending unsurveyed base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
California	68,000.00	168,800.00	222,000.00	42,600.00
Colorado	475,500.00	54,000.00	30,200.00	2,200.00
Idaho		188,600.00	5,000.00	493,200.00
Montana	7,200.00	228,400.00	43,100.00	166,900.00
Oregon	106,600.00	232,000.00	6,300.00	7,200.00
South Dakota	9,000.00	2,500.00	19,500.00	8,200.00
Utah	16,600.00	355,000.00		31,300.00
Washington		104,000.00		16,500.00
Wyoming	129,000.00	297,000.00	57,400.00	23,600.00
Total	811,900.00	1,630,300.00	383,500.00	791,700.00
Montana (new)			4,285.35	112,883.30
Idaho (new)			12,835.32	24,451.06
Total to April, 1915	811,900.00	1,630,300.00	400,620.67	929,034.36

SUMMARY.

	Acres.	*Acres.*
Approved:		
Surveyed	811,900.00	
Unsurveyed	1,630,300.00	
		2,442,200.00
Pending:		
Surveyed	400,620.67	
Unsurveyed	929,034.36	
		1,329,655.03
Total		3,771,855.03

In explanation of apparent discrepancies in the foregoing tabulated statements, it should be kept in mind that many school sections or parts thereof now within national forests have been heretofore used as base for indemnity selections and the cause of loss designated in approved lists as "settlements" mineral or other cause. For example, further research discloses that in Utah 75,480 acres of selections have heretofore been approved on basis of lands designated in the clear lists as Uintah Indian Reservation lands, whereas same have since the opening of such reservation been included in national forests.

CONCLUSION.

It should be said, in conclusion, that in the compilation of the decisions of the courts and the department, such selections only have been made as serve to show the present interpretation of the school grant, without undue citations from the abundance of authority found in the books; and that in the presentation of special features involved in the several grants, every effort has been made to secure such information as will be helpful to the department.

Respectfully,

CLAY TALLMAN, *Commissioner.*

JULY 27, 1915.

The committee, therefore, believe that this legislation is most important and settles the differences and controversies existing between the several States involved and the National Government which have been pending for many years and unanimously recommend an early and prompt consideration and passage of the bill by the House.

○